



RELIGION AND LAW IN CONTEMPORARY GHANA: TRADITIONS IN TENSION

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Abstract

Employing a legal pluralist framework, this thesis examines the complex interrelationships between religion and law in contemporary Ghana, a professedly secular state characterised by high levels of religiosity. It aims to explore legal, cultural and moral tensions created by overlapping loci of authority (state actors, traditional leaders and religious functionaries). It contends that religion can function as an impediment to Ghana's secularity and also serve as an integral tool for realising the state's legal ideals and meeting international human rights standards. Using three case studies – legal tensions, child witchcraft accusations and same-sex partnerships – the thesis illustrates the ways that the entangled and complicated relationships between religion and law compound Ghana's secular orientation. It suggests that legal pluralism is not a mere analytical framework for describing tensions, but ought to be seen as part of the solution. The thesis contributes to advancing knowledge in the area of the interrelationships between religion and law in contemporary Ghanaian public domain.

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INTRODUCTION

Despite the increasing secularisation of contemporary societies, the strength of postcolonial African nation-states continues to crucially depend on religion and custom. Emerging from the old sacred traditional states,¹ contemporary Ghana, for example, celebrates itself as a professed secular state. Ghana's civil law systems do not recognise the legal role of the spiritual forces of the previous society; the State also casts religion, law and politics as discrete domains. Intriguingly, however, there is a continuity between these assumed distinct domains as they are intricately linked in the public sphere. Ancestor-based political institutions exist alongside modern governance. Scholars have also shown the influence of the voices of religious and customary actors in the public sphere especially in vital national security and decision making processes.² As a secular state, the intricate link between religion and politics often leads to the spiritualisation of daily social and political realities in the public domain.³

Consequently, tensions, defined broadly to include legal disputes or cases, religion- and custom-based conflicts, political actions and reactions as well as oppositional discourses, result when the differing normative systems and authorities clash. Academic researches into these tensions have largely faulted religion as occasioning social cleavages that impede efforts to enact liberal democratic ideals.⁴ Similar studies have also reported religious and customary components of law serving as impediments to religious freedom,⁵ women's reproductive health and their access to justice.⁶ Religion, in all its articulations – norms,

¹ Eva L.R. Meyerowitz, *The Sacred State of the Akan* (London: Faber and Faber Ltd, 1951), 27–29.

² Elom Dovlo, "Religion in the Public Sphere: Challenges and Opportunities in Ghanaian Lawmaking," *Brigham Young University Law Review* 25, no. 3 (2005): 629–58.

³ Paul Gifford, *Ghana's New Christianity: Pentecostalism in a Globalising African Economy* (Bloomington & Indianapolis: Indiana University Press, 2004), 161.

⁴ Douglas Kimemia, *Africa's Social Cleavages and Democratization: Colonial, Postcolonial, and Multiparty Era* (Lanham: Lexington Books, 2016); Mark Juergensmeyer, "Introduction: Religious Ambivalence to Global Civil Society," in *Religion in Global Civil Society*, ed. Mark Juergensmeyer (Oxford: Oxford University Press, 2005), 3.

⁵ Abamfo Ofori Atiemo, "Punish My Husband but Not so Hard: Religion, Customary Values and Conventional Approaches to Human Rights in Ghana," *Religion and Human Rights* 7, no. 2 (2012): 71–93.

⁶ Corinne A.A. Packer, *Using Human Rights to Change Tradition: Traditional Practices Harmful to Women's Reproductive Health in Sub-Saharan Africa* (Antwerp, Oxford and New York: Intersentia, 2002); Akua Kuenyehia, "Women, Marriage, and Intestate Succession in the Context of Legal Pluralism in Africa," *U.C. Davis Law Review* 40, no. 2 (2006): 385–405.

actors, functions – is also seen as a threat to the anticipated “cultural homogenisation of society.”⁷ The complex position of religion as both impediment and vehicle, therefore, necessitates a thorough investigation into the exact role it plays in the legal and political modernisation of contemporary Ghana.

In this thesis, I seek to examine with greater precision than has previously been attempted the complex patterns of interrelations and tensions between the diverse normative systems and authorities in contemporary Ghana. I demonstrate how in discussing the ambivalent nature of contemporary Ghanaian legal and political modernisation, religion often is given inadequate representation. I also develop a typology for describing and interpreting the nature of tensions between the differing normative actors in Ghanaian society. In developing this, I focus on actors rather than themes. Scholarly works on juridical authorities in contemporary Ghana generally focus on national political authorities to the neglect of traditional and churchly authorities. I take a different approach from previous analyses that treat tensions in society topically and rather focus on three key identifiable normative authorities (state actors, traditional leaders and religious functionaries)⁸ to give a holistic analysis of the nature of tensions that emerge in society. I illustrate that analysis of how religion functions in contemporary Ghana that does not take into consideration the centrality of normative actors gives insufficient account of the realities of jurisdictional authority in society.

The thesis seeks to particularly answer the major question: “How significant is the role of religion in contemporary Ghanaian nation-state?” To help answer this question, I seek to explore the ways in which the interrelationships between religion and law lead to tensions in contemporary Ghana and how this complex relationships can be understood.

The central claim of this thesis is that while religions can function as impediments to the development of Ghana’s legal, political and cultural modernisation, they also serve as vital tools for the legal implementation, political mobilisation and development of human rights. I examine this position of religion by grounding my general arguments within the larger conceptual framework of legal pluralism.

⁷ Christian Giordano, “Legal Pluralism: An Adequate Instrument for the Recognition of Multiculturalism?,” *Islam And Civilisational Renewal: Islam and Pluralism*, vol. 1, no. 1 (October 2009): 168-171 at 169.

⁸ Although the thesis uses “non-traditional leaders” as a generic term for monotheistic and other religious traditions which are not indigenous to society, I largely emphasis on churchly leaders who dominate in the discussion in this thesis.

This thesis conforms to recent academic religious studies by drawing upon diverse disciplines and methodological traditions to give a descriptive, analytical and normative analysis of the kinds of tensions in which religion often is accused in contemporary Ghana. It also includes a significant ethnographic dimension alongside a detailed examination of primary and secondary literature. These methods are employed in undertaking a systematic analysis of the implications of the coexistence of overlapping normative systems and authorities.

Arguments advanced in this thesis are established using three different but interrelated case studies. These case studies focus on: 1) tensions resulting from jurisdictional control of normative orders; 2) child witchcraft; and, 3) same-sex partnerships. Each of these case studies reflects tensions associated with the different normative orders (religious, customary, statutory and international) in the postcolonial nation-state of Ghana. Together, these distinct cases reveal how religion underpins, positively and negatively, the contest for space, individual moral autonomy, religious freedom, legal authority and political sovereignty.

The objectives of this thesis are threefold. First, it identifies and maps the relations and gaps between diverse normative orders and sources of their authority. Second, it identifies how the various normative actors compete for autonomy and jurisdictional authority, and how this situation results in tensions. Third, and crucially, by contextualising the competing normative claims, this thesis critiques existing accounts of the role religion plays in contemporary Ghana.

A major contribution of this thesis is that it offers a baseline analysis of the theory and praxis of religion and law in contemporary Ghana.

The thesis focuses primarily on the Fourth Republican period, which began in 1993, to demonstrate the mutual interdependence of religious, legal and political domains in contemporary Ghana. My choice of this time frame is key for two specific reasons. First, unlike previous regimes, this period has experienced a sustained democratic culture. Its current (1992) Constitution also upholds freedom of religion and a series of other rights of universal significance. As a modern democratic state, it privileges legal universalism by placing a premium on individual-based rights and autonomy rather than the old religion-based communitarian rights and ideals, a situation that results in tensions.

Second, this timeframe incorporates a crucial period of change in Ghana's religious demography, especially associated with the rise of pentecostalism.⁹ Prominent scholarly works have intimated that unlike the established churches, the theology of Ghana's pentecostals prior to the period under study was largely apolitical, focusing mainly on the Faith Gospel of success, health and wealth.¹⁰ Recent scholarly analysis of the different campaign messages, have shown that Ghana's pentecostals have become crucial in the political atmosphere of this era. More importantly, under the Fourth Republican regime, pentecostal pastor-prophets have become vital normative actors of society. They have gradually assumed, and also provided context for, "charismatic authority" in the public sphere. Despite previous works acknowledging the increasing political role of these pastor-prophets,¹¹ there are not much studies on religious leaders who have increasingly become competing juridical authorities. Concentrating on this period then will help pay attention to how the democratisation of Ghana has led to increasing legal role of religious actors and the tensions that result from it.

1. Conceptual Approaches

The thesis uses legal pluralism as an overarching conceptual framework to explore the interrelationships between the various normative legal traditions and the role their actors play. Legal pluralism is an important legal concept that explains the recognition of more than one legal system within a jurisdiction.¹²

⁹ I focus largely on pentecostalism. However, because most of the issues are not peculiar to this cluster of movements, I will often refer to Christianity more generally. I have also taken notice of the scholarly controversy over the proper usage of the term "pentecostalism," not only in the Ghanaian academic sphere but also elsewhere. The use of the uncapitalised "p" is, therefore, deliberate. While a great deal of the references will be made to independent charismatic churches, the thesis follows Amos Yong's definition and use of "pentecostalism" in the general sense to refer to those "churches or movements that self-identify as Pentecostal, as well as others that may not explicitly, but yet have adopted a charismatic spirituality that looks like, sounds like, and even speaks (doctrinally and theologically) like that which lays claim to the name." Amos Yong, *In the Days of Caesar: Pentecostalism and Political Theology* (Grand Rapids: William B. Eerdmans Publishing Company, 2010), xviii.

¹⁰ Paul Gifford, *African Christianity: Its Public Role* (Bloomington & Indianapolis: Indiana University Press, 1998), 84–85; Yong, *In the Days of Caesar*, 4–7.

¹¹ For exceptions in this gap, see Paul Gifford, *African Christianity: Its Public Role* (Bloomington & Indianapolis: Indiana University Press, 1998), 167 and also John F. McCauley, "Africa's New Big Man Rule? Pentecostalism and Patronage in Ghana," *African Affairs* 112, no. 446 (2013): 1–21.

¹² John Griffiths, "What Is Legal Pluralism?," *Journal of Legal Pluralism* 32, no. 24 (1986): 2–55; Brian Z. Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global," *Sydney Law Review* 30, no. 3 (2008): 375–411.

Fundamental to the post-Westphalian society is the sovereignty of the nation and the unified system of law. The basic assumption has been that the creation of legal centralism is ideal for the state to successfully maintain its control and power. The modern nation-state, therefore, seeks to achieve this by rationalising “the law” and imposing it through its bureaucratic structures. Max Weber has demonstrated that the function of the law in society is to have some form of “*monopoly of the legitimate use of physical force* within a given territory.”¹³ The State, in this sense, is held to be the sole possessor of the right to use the coercive apparatus which is the supreme tool necessary for social control. Weber acknowledges that force is not, indeed, the only state mechanism of legal control. Rather, he notes, it is a means specific to the state. “The right to use physical force is ascribed to other institutions or to individuals only to the extent to which the state permits it.”¹⁴

The problem with such hegemonic legal ideal is that the State, in practice, has not succeeded in preventing either “norm entrepreneurs” (changers of social norms)¹⁵ or other controllers of normative traditions from using violence to enforce law. Some have argued that legal centralism is ideal in cosmopolitan societies. As will be seen later in this thesis, despite the superimposition of colonial and postcolonial state laws on the already existing religious and customary legal safeguards of society,¹⁶ the manner in which the State’s exercises its legal power has led to a web of tensions. The legal centric claim has indeed fallen out of value in recent times. John Griffiths argues that legal centralism is actually “a myth, an ideal, a claim, an illusion.”¹⁷ What is factual, according to Griffiths, is legal pluralism.

Legal pluralism as a concept first emerged in the 1920s from Bronislaw Malinowski’s anthropological study that reflected on the nature of customs of some self-governing Melanesian society of the Trobriand Island.¹⁸ The concept quickly became a handy

¹³ Max Weber, *From Max Weber: Essays in Sociology*, trans. H.H. Gerth and C. Wright Mills (London: Routledge, reprinted 1970, [1948]), 78, 83.

¹⁴ Weber, *From Max Weber*, 78.

¹⁵ Michael Tylor, *Anarchy and Cooperation*, 1975, 45-46; Robert C. Ellickson, “A Critique of Economic and Sociological Theories of Social Control” *Journal of Legal Studies*, vol. XVI (January 1987): 67-99.

¹⁶ Boaventura de Sousa Santos, *Toward a New Common Sense: Law, Science and Politics in Paradigmatic Transition* (New York: Routledge, 1995), 473.

¹⁷ Griffiths, “What Is Legal Pluralism?,” 4.

¹⁸ Bronislaw Malinowski, *Crime and Custom in Savage Society* (New York: Harcourt, Brace and Company, 1932).

anthropological tool for analysing the hierarchical arrangements and the intermingling of diverse laws in the colonial frontiers. Scholars have, in recent times, used this concept to explain the challenges and opportunities of how postcolonial legal norms and systems continue to interrelate.¹⁹ In legal pluralism, the boundary between the legal and the social becomes nuanced. To be sure, as I clarify below, debate is ongoing about where to clearly draw the line between state and non-state normative orders that can and cannot be termed as law.²⁰

In Ghana and other postcolonial states, owing to the multiple sources of normative orders, the society can aptly fit into what Sally Falk Moore terms as “semi-autonomous social field.”²¹ Like societies elsewhere, it has its “rule-making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance.”²²

Particularly from the 1980s, the ideas of Griffiths in his “What is Legal Pluralism?” came to dominate scholarly discussions on legal pluralist discourse. Influenced by his “the ideology of *legal criticism*,”²³ scholars began to re-examine the dominant positivist approach. They began to question the hierarchical arrangement of legal systems in multicultural and multi-norm generating societies where a particular legal system has priority over others. Recent studies have taken on a new meaning of legal pluralism. Brian Tamanaha has critiqued Griffith’s idea accusing the former of romanticising the notion of law, approaching the law from a conception based on hierarchical and formal settings. Tamanaha argues that Griffith’s model, like similar others, is devoid of a proper conception of what constitutes law.²⁴

¹⁹ Sally Engle Merry, “From Law and Colonialism to Law and Globalization Law, Custom, and Social Order: The Colonial Experience of Malawi and Zambia by Martin Chanock,” *Law & Social Inquiry* 28, no. 2 (Spring 2003): 569–90.

²⁰ Sally Engle Merry, “Legal Pluralism,” *Law and Society Review* 22, no. 5 (1988): 869–96.

²¹ Sally Falk Moore, “Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study,” *Law and Society Review* 7 (1973): 719–46.

²² Moore, “Law and Social Change,” 720.

²³ Griffiths, “What Is Legal Pluralism?,” 3.

²⁴ Brian Z. Tamanaha, “The Folly of the ‘Social Scientific’ Concept of Legal Pluralism,” *Journal of Law and Society* 20, no. 2 (Summer 1993): 192–217.

Such situations reveal some of the challenges associated with the use of the term legal pluralism. This thesis specifically examines some of these challenges. Among others, there is the conceptual difficulty of how legal theorists and philosophers can overcome the inconsistencies and the lack of clarity associated with the term. Here Gunther Teubner has noted that:

It is the ambivalent, double-faced character of legal pluralism that is so attractive to postmodern jurists. Like the old Roman god Janus, guardian of gates and doors, beginnings and ends, with two faces, one on the front and the other at the back of his head, legal pluralism is at the same time both: social norms *and* legal rules, law *and* society, formal *and* informal, rule-oriented *and* spontaneous. And the relations between the legal and the social in legal pluralism are highly ambiguous, almost paradoxical: separate but intertwined, autonomous but interdependent, closed but open.²⁵

Some scholars have suggested replacing the term legal pluralism with “normative pluralism” which they believe properly speaks to the purpose for which the term is employed.²⁶ When the thesis uses “legal pluralism,” it refers the coexistence of state law, religious, and customary normativity in An Na’im’s terms.²⁷ The benefit of using legal pluralism is that whereas normative pluralists and legal pluralist scholars differ as to their definition and reasoning, there is a seeming consensus between them that legal pluralism assumes a degree of shared, unranked and coexistent normative legal authority and autonomy.²⁸

The other difficulty is that the development of legal pluralism is seen as a departure from and a challenge to the dominant conception of what should count as law and how it differs from other normative systems.²⁹ An important challenge in relation to this is that, as noted already, law is largely defined in terms of its unitary sources, favouring state-law system. M.B. Hooker, a key contributor to the understanding of the superimposition of colonial law into customary and religious laws of the colonised societies has lamented how

²⁵ Gunther Teubner, “The Two Faces of Janus: Rethinking Legal Pluralism,” *Cardozo Law Review* 13 (1992): 1443–62.

²⁶ Abdullahi Ahmed An-Na’im, “Religious Norms and Family Law: Is It Legal or Normative Pluralism?,” *Emory International Law Review* 25 (2011): 785–809, especially at 795. (He argues that legal pluralism is counterproductive and incoherent as it fails to define the law that is supposed to be pluralistic). For some, legal pluralism is an exponent of normative pluralism. William Twining, “Normative and Legal Pluralism: A Global Perspective,” *Duke Journal of Comparative & International Law* 20 (2010): 473–517.

²⁷ An-Na’im, “Religious Norms and Family Law,” 798. The thesis also occasionally uses “norm” and “law” interchangeably even though it uses the later when referring to statutory law.

²⁸ Paul Schiff Berman, *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders*, First paperback edition (New York: Cambridge University Press, 2013), 10.

²⁹ Twining, “Normative and Legal Pluralism: A Global Perspective.”

law is often seen a set of consistent principles, valid for and binding upon the general populace and originating from a single source.³⁰ The challenge, as he observes, is that “law” presumes a unitary or “universal” appeal and applicability. This situation often undermines the unofficial legal systems or the “living law” of society.³¹

The other difficulty with dominant definitions of law is that it sets state-law system apart from customary or religious legal norms which emerge from a particular ethnic or religious community and are binding on that particular community or population. The thesis does not participate in the definitional controversy associated with legal pluralism. I agree with Griffiths that such situations directs focus of research.³² Instead, I focus on what the semiautonomous social fields of contemporary Ghanaian society treat as law. For purposes of this thesis, however, I define “law” simply as a system of rules of behaviour that is enforced. This definition is consistent with definitions by other legal theorists.³³ This understanding of law also agrees with the argument by dominant conception that “law is not limited to official state legal institutions,” but rather “law is found in the ordering of social groups of all kinds.”³⁴ The benefit of my definition of law is that as Sally Engel Merry has pointed out in her “Legal Pluralism,” “it draws no definitive conclusions about the nature and direction of influence between the normative orders. The outside legal system penetrates the field but

³⁰ M.B. Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws* (Oxford: Clarendon Press, 1975), 1.

³¹ For example, in his *Fundamental Principles of the Sociology of Law*, Eugen Ehrlich observed that law is found in every society and that it is useful for the ordering of society. Ehrlich developed his theory of “living law” against the dominant notion of legal centralism. For him: “It is not an essential element of the conception of law that it be created by the state, nor that it constitute the basis for the decisions of the courts or other tribunals, nor that it be the basis of a legal compulsion consequent upon such a decision.” Eugen Ehrlich, *Fundamental Principles of the Sociology of Law*, trans. Walter L. Moll (Cambridge: Harvard University Press, 1936), 24.

³² Griffiths, “What Is Legal Pluralism?”

³³ H.L.A. Hart, for example, has defined law as a generally obeyed rules of behaviour. H.L.A. Hart, *The Concept of Law*, Second Edition (Oxford: Clarendon Press, 1994), 116. John Finnis, the natural law theorist holds law in terms of its practical reasonableness – positive legal system. (1) practical principles for human flourishing used by all; (2) requirements of practical reasonableness leading to morally right and wrong acts, enabling (3) a set of general moral standards” (p.23). John Finnis, *Natural Law and Natural Rights*, Second Edition (Oxford: Oxford University Press, 2011), 23, 276–77. The authority of law dwells in the state, the tribe or international body or other institutions. Law must reflect the consensus of different “social arenas.” Brian Z. Tamanaha, *A General Jurisprudence of Law and Society* (Oxford: Oxford University Press, 2001), 206–8. In other words, its application and acceptability must cut across the boundaries of any particular legal enquiry – nation-state, a village, a social club, international business community.

³⁴ Tamanaha, “Understanding Legal Pluralism,” 391; Ehrlich, *Fundamental Principles of the Sociology of Law*, 38.

does not dominate it; there is room for resistance and autonomy.”³⁵ Anne Griffiths has also outlined some of the difficulties associated with human rights especially when legal pluralism is invoked.³⁶ This is very useful when later in the discussion I interrogate some of the human rights challenges in relation to state responsibility.

It has already been pointed out that tensions occur when the different legal traditions collide or when their actors insist on the application of their respective laws in contemporary Ghanaian public domain. To be sure, such tensions are not unexpected. They are normal and logical outcomes of plural legal societies. Nevertheless, the exact nature of these tensions has not been properly problematized. The thesis uses legal pluralism as a conceptual framework in three different dimensions. It gives a descriptive, analytical, and normative examination of the religion-law tensions in contemporary Ghana.

The descriptive component of the thesis is useful in addressing the question of *what is* in relation to the way law, with its interrelationships with religion, is understood. My descriptive analysis illuminates meaning that challenges the way tensions have largely been presented in previous works. As will be seen throughout Chapter two and much of the subsequent chapters, the descriptive component of my research is useful in discerning what these tensions are thereby bringing a different dimension into the ways religion-law tensions have been approached. The descriptive component also has the advantage of providing a useful framework for emphasising the crucial functions that the different non-state normative authorities play in contemporary Ghanaian legal domain. But, even more significant, my use of legal pluralism serves as an analytical angle of vision through which I look into the different complexities that the case studies used in this thesis suggest about the religion-law relationship reveal.

The analytical component of my use of legal pluralism specifically concerns *what is going on* and gives a series of causal links between religious imaginations and the legal and political conditions of contemporary Ghanaian public sphere. Such causal explanations create spaces for understanding the conditions that prepare the ground for legal tensions in society.

There is another dimension of legal pluralism that the thesis will focus on later in the discussion. This is the normative (“the ought to”) dimension. After giving insights into the

³⁵ Merry, “Legal Pluralism,” 878.

³⁶ Anne Griffiths, “Legal Pluralism,” in *An Introduction to Law and Social Theory*, ed. Reza Banakar and Max Travers (Oxford: Hart Publishing, 2002).

tensions, a key question is: “How can these tensions be managed?” Given that definitions of law, the role of the state, of community, and of space have in recent times been altered under conditions of globalisation,³⁷ what ought to be a proper functioning plural legal society? To be sure, little attention has been paid to how legal pluralism as a diagnostic tool for analysing tensions can also be a solution in itself. It is a tool for appreciating competing legal tensions in society. While this normative dimension is not central to my purpose in the thesis, or the analytic and empirical analysis, it is an essential aspect of legal pluralism and of immense practical significance. The normative component of legal pluralism, a major contribution of the thesis, addresses the benefit of using the various normative systems in Ghana when tensions occur. My thesis, therefore, emphasises on the normative dimension of legal pluralism as an aid in overcoming some of the tensions associated with dominant concepts and concerns of legal pluralism. To achieve a proper functional legal and human rights regime, the concluding chapter, in particular, therefore, gives a number of normative proposals necessary for integrating the competing legal frameworks discussed in this thesis.

By using legal pluralism as a discursive, analytical, and normative lens, the thesis avoids assuming that there is a unitary and simple postcolonial legal history that accounts for competing normative claims in society.

It is instructive that although there is little research specifically on “Ghanaian legal pluralism,” there is a considerable literature on the simultaneous application of customary law (previously “native law and custom”), statutory law and international human rights law. Yet little attention has been paid to the utility of religious and customary normative systems. As the discussion in Chapter one will show, customary law, and Christian and Islamic laws (non-traditional religious laws) have coexisted in Ghanaian society for some time. Prior to the advent of Islamic and Christian missionaries and colonial influence, the traditional states were governed by customary laws which received their authority from the differing spiritual forces of society. Many of the legal norms were resisted on pain of death.³⁸ The legal impact and significance of the arrival of monotheistic Islam and Christianity have been interpreted in a variety of ways. For some scholars, when Islamic and Western Christian traditions were first introduced to traditional African societies, they were peacefully received and domesticated in ways that led to the introduction of a different authoritative sources of

³⁷ Ralf Michaels, “Global Legal Pluralism,” *Annual Review of Law and Social Science* 5 (2009): 243–46.

³⁸ R.S. Rattray, *Ashanti Law and Constitution* (London: Oxford University Press, 1929), 310.

governance.³⁹ Islamic and Christian ideas became an influential source of law and order. These values contested existing ancestral laws of the land. This, in a way, introduced yet another source of a normative law in society. The basic assumption here is that a sort of normative hybridity resulted in society even if in a weak form. Yet these legal norms became an important source of conflict between the then “alien” religious groups and traditional authorities who saw their power threatened and the laws of their ancestors undermined.⁴⁰

Scholars have argued that in the context of contemporary Ghana, and in other postcolonial African nation-states, legal pluralism began with the introduction of formal colonial rule.⁴¹ But this also came with some challenges, which Chapter one examines in detail. The post-independence nation-state inherited the British legal system. Although the constitutional law makes little reference to common law, its interpretative processes follow the common law tradition.⁴² The new nation-state allows multiple authority from customary, statutory and international legal orders to coexist. Yet religious and customary legal norms are often treated as less authoritative laws in the State legal ranking. These categories of law to apply in relation to private law, family and domestic relations. In cases of conflict of law, the new nation-state allows for the application of choice of law rule (what type of law to be applied in a particular jurisdiction). However, just as in colonial times, in each of the sources of law, there are conceptual and practical difficulties with conflicting and overlapping norms. This thesis utilises the concept of legal pluralism to further demonstrate the different levels of complexities.

³⁹ For a discussion on the domestication of Islamic and Christian values and ideals, see Lamin Sanneh, “The Domestication of Islam and Christianity in African Societies: A Methodological Exploration,” *Journal of Religion in Africa* 11, no. 1 (1980): 1–12.

⁴⁰ Note that by 1911, for example, mission Christianity had only a population of 7,168 out of the total population of 287,814 in Ashanti representing about 2.5% of the entire population. Yet this number was enough to create enormous friction between them and the traditional authorities. K.A. Busia, *The Position of the Chief in the Modern Political System of Ashanti: A Study of the Influence of Contemporary Social Changes on Ashanti Political Institutions* (London: Frank Cass and Co., Ltd, 1968), 134.

⁴¹ W.C. Ekow Daniels, “Development of Customary Law,” *Review of Ghana Law* 18, no. 68, 69 (92 1991): 75; Anthony Allott, *Essays in African Law with Special Reference to the Law of Ghana* (London: Butterworth & Co. [Publishers] Ltd, 1960).

⁴² Gordon R. Woodman, “Ghana: How Does State Law Accommodate Religious, Cultural, Linguistic and Ethnic Diversity?,” in *Cultural Diversity and the Law: State Responses from Around the World*, ed. Marie-Claire Foblets, Alison Dundes Renteln, and Jean-François Gaudreault-DesBiens (Bruylant, Bruxelles: Éditions Yvon Blais, 2010), 267.

The above situation often leads to a dichotomy between what scholars have referred to as the “living law” of the people (daily realities) and the law on the statute books (“legal propositions”).⁴³ Later, in Chapter four, we will see that while constitutional law guarantees individual moral autonomy, the living realities of the people often upset this provision. The problem is even compounded when international human rights laws are also invoked.⁴⁴ Using this ambivalence as my framework, the thesis contextualises tensions between coexisting normative traditions and also teases out the complex role religion plays in these tensions.

2. Research Process and Methods

To be able to demonstrate the above complexities and the tensions that result from it, the thesis methodologically employs an actor-oriented approach based on ethnographic fieldwork and a document content analysis. The ethnographic materials are largely based on interviews with carefully selected informants.

Forty-five formal – including telephone – interviews and five email correspondences were conducted with key informants (chiefs, traditional religious specialists, Christian religious functionaries, “victims” and relatives, media and legal experts, and academics).⁴⁵ Though an actor-oriented approach, the voices of the masses were included for a better analysis. As a result, twenty-one informal interviews with ordinary citizens were also undertaken. Considering that the thesis employed case studies coupled with the limited amount of time and resources, this sample size was enough and useful to the richness of my analysis.

Selection of most of the relevant actors and informants was based on personal contact. Most of them were already known to me based on my previous research experience in the area. My familiarity with the local conditions and some of the tensions helped me not only in the selection of the informants, but was also crucial for me to probe further during interviews to ascertain the validity of certain claims. Prior to the interviews, I visited key informants and on a few occasions made phone calls to seek their permission and a convenient date for the interview. During this visit or call, I explained the purpose of the research as contained in the

⁴³ Ehrlich, *Fundamental Principles of the Sociology of Law*, 38.

⁴⁴ Jean L. Cohen, *Globalization and Sovereignty: Rethinking Legality, Legitimacy, and Constitutionalism* (Cambridge: Cambridge University Press, 2012), 221.

⁴⁵ See Appendix for a list of names of informants (largely pseudonymised) whose views featured prominently in the thesis.

participant information sheet I handed out to them. In line with the research ethics, the content of the research consent form was discussed with my informants and they were reminded they can discontinue with the interview.

In addition to my personal contact with the key informants, some of the intended informants later referred me to relevant persons, who they thought were better positioned to respond to the issues raised. Key actor-informants were largely selected from the traditions they represent because, as will be seen in subsequent chapters, they were also crucial sources of tensions discussed in this work. Again, they represented the different types of law identified in this work and have an appreciable amount of insights into their traditions. The depth of their knowledge about traditions other than their own was an added advantage to the amount of information I received from them. Not only that, some of the chiefly and churchly actors were also professionals with expertise in other areas and plurality of laws I discussed. A churchly informant, for example, was also a legal expert with a strong traditional background. These traits gave him a good insight into and a personal experience with the different forms of law and the associated tensions.

While the number of informants interviewed was not equally distributed, because the case studies vary, interviews were semi-structured and divergent opinions and perspectives were received from these informants. This made it possible to analyse the cases from differing angles of vision. Even so, as the discussion in subsequent chapters will indicate, some of their responses betray personal biases towards their own traditions. To address this, efforts were made to show how most of the statements of the chiefly, churchly and government officials contradicted their own values. More of this later in Chapter four, for example.

In line with the ethics on anonymity of this thesis, real names and identity of recorded informants (also provided in the appendix) were avoided. Two informants, the anthropologist and clergyman, Most Reverend Dr Peter Kwasi Sarpong, the Archbishop Emeritus of Kumasi (Archbishop Sarpong) and Nana Abubakar Akumfi Ameyaw, a chiefly informant in the Techiman Traditional Area, however, waived their right to anonymity and they have, therefore, been cited in this work as such.

Interviews were conducted in three overlapping phases reflecting the three case studies of this research. For my first case study, which deals with legal tensions, I interviewed traditional and churchly actors in addition to some media and legal experts. The chiefly actors I interviewed included different categories of chiefs who exercise different levels of control:

divisional and sub-divisional chiefs as well as village heads.⁴⁶ I interviewed these types of chiefs to find out if different levels of power correlate with different understandings and appreciations of religious, legal, political, and human rights issues. Topics discussed in the interviews included, the legal limits and extents of chiefly powers, chiefly appreciation and scepticism of modern human rights and, how conflicts between chiefly and other laws are resolved.

I interviewed eight pastor-prophets from the independent charismatic churches and three pastors from the mainline churches. The reason for giving priority to pastor-prophets from the independent charismatic and the established pentecostal churches is because they are central to the particular cases I evaluate. The topics addressed in these interviews included: the normative powers these leaders exercise over their members; the reasons why conflict between them and traditionalists occur; the preferred mode of resolving these conflicts; the limits of their influence; and whether or not they have coercive power to enforce their legal norms. These interviews with both the chiefs and pastor-prophets were essential in determining how critical is the use of force in the application of their respective norms or to their claims to religious rights in spite of constitutional provisions that guarantee the religious freedom of others.

For my second case study which deals with child witchcraft, I interviewed all the churchly leaders already mentioned in addition to other four traditional religious specialists who operate major shrines that exorcise victims of witchcraft. I also interviewed the churchly leaders already mentioned, particularly pastor-prophets from the independent charismatic churches who are involved in exorcism – known in pentecostal parlance as “deliverance” services.⁴⁷ My interviews with both groups of religious specialists included questions relating to the relevance of exorcism in their religious worldviews; the specific legal and human rights protections they have for people who visit them for exorcism; and the amount of force needed to exorcise what they consider as a recalcitrant demon. I also interviewed four individuals

⁴⁶ According to section 58 of the Chieftaincy Act, 2008 (act 759), the following are the categories of chiefs in Ghana “(a) the Asantehene and Paramount Chiefs, (b) Divisional Chiefs, (c) Sub-divisional Chiefs, (d) Adikrofo, and (e) other chiefs recognised by the National House.” The study focused largely on the last two categories because particularly in the rural areas, they are directly involved with the activities of their people on a day-to-day basis. Most cases are handled in their “courts” or palace before they go to the higher chiefs (from the sub-divisional chiefs up to the Asantehene (king of the Asante) and Paramount Chiefs, if need be).

⁴⁷ While both denominations emphasise exorcism, they latter have clear guidelines regarding how it must be carried out. Activities of the former have raised more human rights concerns than that of the latter hence my decision to interview more of them.

who claimed to have experienced human rights violations resulting from such exorcisms, and significant relatives who frequent traditional shrines and prayer centres. My interviews were designed to elicit informants' understanding of the relevance of exorcism, and the extent to which their understanding of witchcraft is informed by their social, economic, and political as well as religious conditions. I wanted to identify the sort of treatment that different groups considered appropriate and acceptable for alleged witches, and what would be considered inappropriate or unacceptable; their awareness of any inappropriate practice, and the remedies available to parties who have been affected by such practice. The rationale for this case study was to develop the framework necessary to determine the relationship between religious worldviews and abuse of state legal and human rights systems.

For my third case study, which focuses on same-sex marriage, I interviewed same-sex partners and their families and friends, traditional leaders, religious specialists – both traditional and non-traditional – and lawyers and legal experts. I interviewed four homosexuals and focused on topics that included their experiences of how society treats them due to their sexual orientation; the ability to openly express their sexual orientation; and, the types of options available for them when they experience discrimination and marginalisation. I also interviewed 10 family members and friends of same-sex partners. Topics addressed in interviews included: how their religious and customary worldviews inform their perceptions of same-sex partners; the challenges associated with living with homosexual relatives, and the nature of these difficulties; the nature of response/support available for homosexuals within the family unit; and, the kind of protection – state or non-state legal options – to be appealed to in cases of discrimination.

In the case of religious functionaries and political elites, in addition to those mentioned in the previous case studies, I also interviewed two Catholic bishops including Archbishop Sarpong mentioned above. Besides these, three priests and four church elders from both mainline and pentecostal churches were interviewed. This selection was vital in gaining a sense of the views of both the mainline churches and the pentecostal/charismatic churches.

Finally, I engaged in informal conversations and interviews with twenty members of society individually and in groups of three or four.⁴⁸ These groups were selected based on

⁴⁸ Violence committed against same-sex partners have been carried out by ordinary members of the community, hence the decision to include them in my interviewees. I interviewed them on whether or not they have participated in such acts of violence and what their motivation was.

personal acquaintance with them and through contact persons. Topics related to my chosen case studies were raised as part of our normal conversations to know what their understanding of these issues were. Topics discussed with these informants included why they oppose, and the nature of their objection to, same-sex partnership, the importance of religious views of same-sex marriage, and the limits and boundaries of their power and practice in dealing with same-sex partners. I also talked to them about the previous topics also especially their experience with witchcraft. The purpose of analysing this case study was to explore how religious imaginations and customary worldviews continue to shape people's lives in a secular nation-state such as contemporary Ghana.

In addition to interviews, I also relied on a critical analysis of important historical data including statutes, law reports, and colonial reports. More specifically, I focused on original and classical documents including colonial documents such as the *Chief Commissioner's Annual Report*, *Native Administrative Ordinances*, the *Order in Council* (No. 28), select Court Cases, Petitions and Reports on the *Persecution of Persons Accused of Witchcraft*.⁴⁹ I also made reference to relevant parliamentary discussions, and state legislations such as 1960 Criminal Code.⁵⁰ I read these documents to discern the development and framework of legal pluralism. These documents tell the story of the evolution of Ghana's laws since the period of the colonial encounter. The introduction of these laws created a context for resistance between chiefly actors and the colonial power as the latter saw their power and influence diminished in their territories with the transplantation of colonial laws. The works, therefore, provided insights into my analysis of how religious, customary and civil law structures have co-existed with, and also resisted, each other.

Given that the news media play an essential role in information dissemination and most of the cases come to the public domain through the media, I also undertook a critical review of some of the media programmes, stories and reports. Many of reported stories have also created moral panic in society which raises issues of concern dealt with in this thesis particularly in relation to same-sex partnerships.

The information provided from the field is significant and adds to my analysis of the pertinent literature. Unlike previous analysis that often analyse high profile cases of national

⁴⁹ ADM 11/1/886, Case No: 32/1924 (National Archives)

⁵⁰ This document though it has been amended since 2003 still deals with issues of sex in very ambiguous ways such that it makes it very difficult for victims of same-sex to appeal to it. See Section 104 (2) of the Criminal Code (Amendment) Act, 2003.

interest, most of the information from my fieldwork hardly come to public light although, at the grassroots level, they suggest that they are a real challenge to the development of legal pluralism and human rights in Ghana.

3. Research Context

While tensions between religious, legal and political traditions are widespread in Ghana, this thesis focuses mainly on select areas of the Akan of southern Ghana. The choice of this area is crucial for a number of reasons. Akan are the largest ethnic group in Ghana and Cote d'Ivoire. In Ghana, the Akan constitute 47.5% of the total population according to the 2010 Population and Housing Census. Cases selected from these areas also have wider national significance and semblances. According to George Hagan, in Ghana, the various subcultures "embrace, to some extent, an overarching culture of shared values, collective symbols, norms, rules, attitudes and behaviour patterns."⁵¹ Abamfo Atiemo's concept of a common national culture further illuminates Professor Hagan's observation. This is not to suggest that Ghana is a culturally homogenous nation-state. Rather, it assumes that there are commonly agreed ways of life that are found in all (at least most) Ghanaian societies.⁵² These common cultural traits, says Atiemo, provide useful notions of legal and human rights standards. This presumes that there are common religious, cultural and moral values that govern individual and public lives of Ghanaians.

Akan customary law bear significant semblances to other groups in Ghana. Most of the traditional religious and political institutions also overlap with those of other ethnic groups. Chiefly actors, for example, continue to exercise considerable influence in all parts of the country. Traditional and religious leaders are vital for non-state mechanism of control in societies other than Akan areas of Ghana. These and other religious cultural semblances provide an essential context for the analytical generalisations made in this work. Despite focusing on the Akan area, however, cases from other non-Akan areas were cited for analysis.

Considering that there is a common national culture and tradition vital for analytical generalisation, I focused mainly on the Ashanti and the Brong Ahafo regions. Certain factors

⁵¹ George P. Hagan, "Cultural Pluralism, Religion and Educational Philosophy Paradigm," in *Conflict: What Has Religion Got to Do with It? : An African-European Dialogue* (Accra: Woeli Publishing Services, 2004), 229.

⁵² For a list of shared national cultures, see Abamfo Ofori Atiemo, *Religion and the Inculturation of Human Rights in Ghana* (London: Bloomsbury Academic, 2013), 64.

were taken into consideration. First, these two administrative regions were selected for geographic convenience owing to my familiarity with the place. I am aware of some of the unreported tensions discussed in this work. As has already been seen, this made the selection of appropriate informants convenient. My command over the two dominant dialects of the Twi language (Asante and Bono)⁵³ of the area lessened the burden of interpretation and the associated problems.

Second, the two regions were useful sites because of their historic, religious, cultural, socioeconomic and ethnic significance to postcolonial Ghana. They are also suitable choices to understand issues of religious and legal pluralism as well as local governance. Most of my informants were selected from the traditional states of the Brong Ahafo region. This region, though an Akan-dominated (Bono and Ahafo) region, is also home to other ethnic groups such as the Banda, the Mo, the Nafana, and the Nchumuru. This has led to a remarkable degree of intercultural interactions in the region. Due to the dominance of farming, fishing, mining and other economic activities, the region attracts diverse cultural, ethnic and religious populations.⁵⁴ For example, the 2010 Population and Housing Census indicates that 61.4% of migrant populations living in Techiman Municipality, where the majority of the interviews took place, were born in another region; 38.6% were born elsewhere in the Brong Ahafo region.⁵⁵ This means that other customary practices are significant in the area and despite the control of the chiefly actors of the area, customary practices and traditions are weakened by the mixed population.

The choice of this region is also significant to this research due to its particular religious demography. According to the 2010 census, of all the ten regions, the Brong Ahafo region has the largest proportion (7.3%) of the population who claim no religion. This change in religious non-adherence is significant to an analysis of the shifting religious demography. The region has also previously recorded cases of interreligious conflict – between traditional adherents and Christians – and intra-religious tensions – between Muslim groups. In recent

⁵³ In most official documents and scholarly works, the words “Asante” and “Bono” are used to refer to the people, the tribe and the language while; “Ashanti” and “Brong” are used when referring to the administrative region. Thus, while the cases are selected from the Akan traditional states, they also have wider national significance and semblances.

⁵⁴ For example, Techiman’s large food market and its close proximity to the northern sector makes it an attractive place to various ethnic groups.

⁵⁵ Ghana Statistical Service, “2010 Population & Housing Census: District Analytical Report- Techiman Municipality” (Ghana Statistical Service, 2014), xi.

times it has also experienced an isolated incidence of internecine conflict between the Seventh-day Adventists and some Muslim communities, particularly in the Atebubu Township.⁵⁶ For some time now, of all the ten regions in Ghana, the Brong Ahafo region has had the highest incidence of chieftaincy disputes.⁵⁷ There is no particular link between the high number of chiefly disputes and the ethnic and religious pluralism. Rather, some of these disputes result from claims of historic allegiance to a particular stool especially the Asante kingdom. Some of these disputes also have their origin in the postcolonial political interventions in chiefly affairs.⁵⁸ Even so, the choice of this region was helpful in examining the tensions in a society that has become increasingly religiously plural and ethnically heterogeneous.

An important reason for choosing these two regions as my research sites is the fact that they both have influential traditional “state deities”, particularly the Bokyerewa deity for the Bono of Techiman and the Antoa Nyamaa deity for the people of Antoa in the Ashanti region. Many Christians and non-Christians hold these deities as powerful and the presumed powers of these deities are still invoked in decisions that affect individuals and groups. In the face of weaknesses in state legal systems, the employment of the power of traditional deities in settling social, economic and political misunderstandings in contemporary Ghana has become pervasive even among high-profile state and non-state actors.⁵⁹ Christians in traditional areas that operate these shrines have stricter prohibitions against the use of the names of these deities. Yet the influence of these deities is so extensive in these areas that, in some places, non-traditionalists cannot bury their deceased, especially witchcraft victims who allegedly die from the curse of the gods, until the necessary rituals are performed.

Local and international human rights NGOs in Ghana have condemned what they describe as dehumanising rituals that are meant to cast demonic powers out in many shrines and prayer camps in the country.⁶⁰ Traditional religious adherents and scholars have on the

⁵⁶ Fred Tettey, “Muslim Youth Burn Church at Atebubu,” *Daily Guide*, February 14, 2015.

⁵⁷ Michael Boateng, “Brong-Ahafo Tops Chieftaincy Disputes in Ghana,” *The Chronicle*, July 14, 2015.

⁵⁸ For specific state-influenced chieftaincy tensions, see, for example, William Tordoff, “The Brong-Ahafo Region,” *The Economic Bulletin* 3, no. 5 (May 1959): 2–18, especially at 7.

⁵⁹ Seth Tweneboah, “The Culture of Duabo (Imprecation), Legal Dysfunction and the Challenge of Human Rights in Ghana,” *Human Rights Research Journal* 9 (2014): 1–10..

⁶⁰ Human Rights Watch, “‘Like a Death Sentence:’ Abuses against Persons with Mental Disabilities in Ghana” (Human Rights Watch, October 2012).

other hand accused human rights activists of failing to understand the people's belief systems. As such, I visited a number of the shrines in order to undertake informed analysis of the nature of exorcism and the extent to which violence was employed. My analysis in Chapter two, for example, uses the Kune Shrine of Kranka to demonstrate the challenges that the norms traditional shrines pose to modern Ghanaian laws and human rights.

A significant amount of information for this thesis was gathered from Tanoboase in the Techiman North District of the Brong Ahafo region alone. This place is traditionally held as a sacred site, the birthplace of all the Akan river deities in Ghana and beyond.⁶¹ With increasing modernising and globalising forces, this sacred community has opened itself up to other religious traditions. What is particularly relevant for my work is that, despite the peaceful coexistence of these different traditions, tensions nevertheless ensue between them over the insistence on applying respective religious values. I examine these later in Chapter two.

The Ashanti region is governed by both the central government, on the one hand, and the traditional authorities represented by the Asantehene (king of the Asante) and his divisional and sub-chiefs, on the other.⁶² In terms of population size and growth rate, the Ashanti region is the most populous region in Ghana. According to the 2010 census, the region is also the second most urbanised in the country, with 60.6% of the population living in urban areas. Although Kumasi, the regional capital and the seat of the Asantehene, is dominated by Asante people, it is one of the most cosmopolitan cities in the country.⁶³ It draws people from different cultural backgrounds, making it ethnically and religiously diverse. Though a very diverse society, the level of diversity has not affected the core ancestral beliefs and practices of the majority of the people. Besides, ethnic- and religion-based tensions are rare in this area. This therefore makes it particularly significant for an analysis of how religious and ethnic diversities are managed by the different normative authorities.

The traditional political institutions in the Ashanti region continue to be a dominant form of governance. The authority of the traditional leaders, especially the Asantehene,

⁶¹ Warren M. Dennis, "Bono Shrine Art," *African Arts* 9, no. 2 (January 1976): 28–37+80.

⁶² The Asante kingdom covers the whole area of the Ashanti region and parts of other administrative regions including parts of the Brong Ahafo region.

⁶³ Kwame Anthony Appiah, "Cosmopolitan Patriots," *Critical Inquiry*, Front Lines/Border Posts, 23, no. 3 (Spring 1997): 617–39.

continues to be much more influential, arguably, than those of the national political actors. This makes the place a meaningful arena for me to test the degree to which the clash between tradition and modernity promotes tensions in Ghana.

Kumasi has been described as the spiritual capital of Ghana.⁶⁴ It is where most of the independent charismatic pastor-prophets begin their ministries from which they spread to other parts of the country. There are a number of reasons why most of the pastor-prophets emerge from Kumasi apart from it being the regional capital, which is beyond the scope of the thesis. What is significant to this work, however, is that the activities of some of these pastor-prophets have raised concerns on account of their reputed violations of human rights laws and disregard for customary norms and authorities.⁶⁵ Many of them have also been associated with engaging in alleged occult activities,⁶⁶ thus indicating the resiliency of traditional religious elements in the face of increasing pentecostalisation of the Ghanaian religious field.⁶⁷

4. Existing Literature

Previous scholars on postcolonial African legal and political modernisation have interrogated the interactions of religion, law and politics. Many of these works have paid attention to the tensions that result from these interactions. In the discussion below I review the principal ways in which these authors have interpreted these issues and how they inform my own analysis in this thesis.

Customary Law

Much of the previous scholarly work on customary law in Africa has focused on the historical evolution of these legal norms, accounting for how they have become an essential part of the modernist nation-states of Africa and how they were undermined by the colonial administration. In *The Nature of African Customary Law*, T.O. Elias offered an interpretation

⁶⁴ Karen Lauterbach, *Christianity, Wealth, and Spiritual Power in Ghana* (Cham, Switzerland: Palgrave Macmillan, 2017), 51–54.

⁶⁵ Seth Tweneboah, “Pentecostalism, Witchdemonic Accusations, and Symbolic Violence in Ghana: Some Human Rights Concerns,” *Pneuma* 37, no. 3 (2015): 375–93.

⁶⁶ “Fetish Priest Declare ‘War’ on Pastors in Kumasi,” *peacefmonline.com*, (February 28, 2015), <http://news.peacefmonline.com/pages/social/201402/191533.php>.

⁶⁷ Rosalind I. J. Hackett, “Discourses of Demonization in Africa and Beyond,” *Diogenes* 50, no. 3 (2003): 61–75.

of the ways in which African customary laws have been portrayed in early European accounts.⁶⁸ Elias complains about the lack of sensitivity shown by early anthropologists, Christian missionaries, colonial administrators and judicial officers who treated customary law with disdain, either because of an insufficient appreciation of the complexities of African customary norms and institutions, or just naivety. He observes that while none of these Europeans denied the existence of African customary law, they erroneously undermined traditional legal systems such as customary inheritance and land tenure, because these had little in common with the accepted forms and standards of European legal systems.⁶⁹

Recent studies in African customary law also advocate that researchers should look more closely at the links between African customary law and European common law, arguing that contemporary customary laws are not a sole deposit of Africa's ancestral norms, practices and experiences. Rather, they developed as a result of the amalgamation of historical processes, British common law, Christian missionary and Islamic laws, and influences of other local cultures.⁷⁰ Martin Chanock has championed this view, exploring the colonial impact on the development of African customary law among the people of Malawi and Zambia. In *Law, Custom, and Social Order*, he argues that African legal conceptions are a product of the rise of capitalism on the one hand, and, on the other hand, "the interaction of the communities thus affected with the concept, strategies and power of British colonial legal institutions."⁷¹ He, therefore, challenges the dominant legal supposition that customary law in Africa is the primal law of the people. Sally Merry, in a review of Chanock's work, has called this dominant assumption the "mythic customary law."⁷²

⁶⁸ T.O. Elias, *The Nature of African Customary Laws* (Manchester: Manchester University Press, 1956).

⁶⁹ Elias, *The Nature of African Customary Laws*, 35.

⁷⁰ Fatou Kiné Camara, "States and Religions in West Africa: Problems and Perspectives," in *Law and Religion in the 21st Century: Relations between States and Religious Communities*, ed. Silvio Ferrari and Rinaldo Cristofori (London and Burlington: Ashgate Publishing Company, 2010), 31–51, argues that until the nineteenth century, when Islam became useful to counter the influence of colonialism, little, if any, evidence suggests that Islamic law was strictly applied in African societies except for a few of the ancient empires. Scholars such as David Owusu-Ansah, "Islamic Influence in a Forest Kingdom: The Role of Protective Amulets in Early 19th-Century Asante," *Transafrican Journal of History* 12 (1983): 100–133, hold a different view.

⁷¹ Martin Chanock, *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge: Cambridge University Press, 1985), 4.

⁷² Sally Engle Merry, "From Law and Colonialism to Law and Globalization Law, Custom, and Social Order: The Colonial Experience of Malawi and Zambia by Martin Chanock," *Law & Social Inquiry* 28, no. 2 (Spring 2003): 569–90.

Chanock, like Elias, criticises early anthropological accounts for their reductionist approach and failure to take into account the peculiar historical processes through which the African legal heritage had developed. He observes that early writings on customary law in Africa also treated these laws through the prism of British jurisprudence. According to Chanock, early anthropological writings on African law took little or no account the way that law was significant for the expression of social solidarity and class interests. These accounts, he said, dismissed the proper governing processes and the role of law in maintaining social order.⁷³ Building on Elias' and Chanock's critique of certain weaknesses and limitations in older accounts, I seek to show how the historical encounter introduced to African societies new normative worldviews. These works have influenced my interpretation and are also particularly relevant to certain sections of the thesis, especially in Chapter one, which deals with how changing socioeconomic, political and legal systems resulting from the encounter have, among other factors, altered the communal emphasis on laws on tenure in Ghana. These works particularly Chanock's also inform the role that the changing economic and political individualism, for example, have played in the "evolution" of child witchcraft occurrences and same-sex partnership.

Justice W.C. Ekow-Daniels, a respected Ghanaian legal scholar, has similarly assessed the limitations inherent in the application of English law in four British West African territories (Gambia, Sierra Leone, Ghana and Nigeria). In *The Common Law in West Africa*, he explored the development of the judicial system that was patterned on the English model, the principles guiding its reception, and the application of this foreign law. The reception of the English common law in West Africa, he argued, was arbitrary and was not subjected to a systematic approach as was done elsewhere (especially in British Guyana). According to Ekow-Daniels: "The various legislatures have not been very keen to ascertain the extent to which common law applies in different territories."⁷⁴ Elsewhere, in his other writing, Ekow-Daniels lamented the destruction of traditional custom due to lack of understanding and limited appreciation shown by the colonisers. He contended that British colonialism posed the first challenge to the existence and future survival of customary law.⁷⁵

⁷³ Chanock, *Law, Custom and Social Order*, 219.

⁷⁴ W.C. Ekow-Daniels, *The Common Laws in West Africa* (London: Butterworth & Co. [Publishers] Ltd, 1964), 161.

⁷⁵ W.C. Ekow-Daniels, "Development of Customary Law," *Review of Ghana Law* 68 (1991-92): 68–94.

Under the conditions of British colonialism, either its authenticity was questioned or customary decisions in cases were thrown out by the colonial administration. In situations where customary law was used in arbitration, it was “treated as foreign law in its own soil.”⁷⁶

Building on these work, I further detail the extent to which customary law and authorities as they exist now have struggled over the years to situate themselves in the legal domains of contemporary Ghana. These works do not tell us much about the nature of tensions in society, however, or why such tensions occur. I seek to address these important questions, particularly by interrogating why in recent times, in spite of constitutional and other legislative recognition, customary law often occupies a subordinate position in terms of the hierarchal structure of legal norms in Ghana. These works help me to show the doubled edged nature of Ghanaian customary law. On the one hand, customary law present traditional authorities with a capital to assert the sovereignty which they enjoyed prior to superimposition of British introduced law thereby challenging state attempt to promote legal universalism. On the other hand too, while customary law has been used to respond to the threat posed by state legal systems and legal universalism, nation-state authorities often invoke customary law as the basis for resisting external influence and pressure that threaten national sovereignty.

Sovereignty and Legitimacy

Contestations between the diverse normative authorities in Ghana manifest themselves in what Donald Ray calls a “divided sovereignty.”⁷⁷ The simultaneous operations of the different forms of power and authority challenge the normative framework of the post-Westphalian notion of sovereignty, which has, over the years, dominated discussion within the global political system. The state’s absolute authority over its territories has become a topic of intense scholarly debate.⁷⁸ The common theme running through these discussions has been the challenges faced by nation-states as a result of external pressures to fulfil certain

⁷⁶ Ekow-Daniels, “Development of Customary Law,” 91/92, 75.

⁷⁷ Donald Ray, “Divided Sovereignty: Traditional Authority and the State in Ghana,” *Journal of Legal Pluralism* 28, no. 37–38 (1995): 181–202.

⁷⁸ Stephen D. Krasner, “Think Again: Sovereignty,” *Foreign Policy*, November 20, 2009, 1.

international obligations and standards. The State's treatment of its own members is now an issue "of international concern," and *everybody's* business."⁷⁹

Jean L. Cohen has aptly articulated the weaknesses and difficulties in the ongoing discussion. Her *Globalisation and Sovereignty: Rethinking Legality, Legitimacy and Constitutionalism*, sheds light on the different dimensions of sovereignty within a particular nation-state. Cohen notes that the modern-nation state no longer has a claim to absolute supremacy of the authority and exclusive jurisdiction over its borders and its population. With increasing pressure from international law and communities, there has been a fragmentation of control over policies, sovereignty, legitimacy and influence. Under these conditions, abuses of power and violations of human rights, for instance, are no longer offences peculiar to a particular nation-state. Whatever concerns one society alarms the global community. This situation has led to a shift, Cohen observed, "in political culture from state impunity to responsibility to the international community and the new liability of perpetrators of such crimes, be they state officials or private persons, to international sanctions."⁸⁰

In recent times, the tension between state sovereignty and human rights has become highly ambivalent. As nation-states subscribe to regional and other transnational legal orders, the very conceptualisation of their sovereignty also becomes questionable. International laws, for example, have put pressure on nation-states not only to conform to global human rights standards but also to modernise some of their deep-seated values and practices. Cohen's notion of multiple sovereignties and legitimacies parallels conditions in emerging secular nation-states, of which Ghana is no exception. But how does contemporary Ghana respond to these external pressures? Insights from Cohen's work helps the thesis build a case for why even though civil law structures and modern human rights regimes allow for individual autonomy and self-assertion, these are, at the same time, used as bases for rejecting certain religious and customary normative systems and authorities. Chapter two, in particular, demonstrates how state authorities project themselves above the legal actors in society.

Cohen's analysis helps us see weaknesses in current international legal theory especially when it comes to its application in relation to the aforementioned challenges of

⁷⁹ Louis Henkin, "Human Rights and State 'Sovereignty,'" *GA. J.Int'l & Comp. L* 25 (1996): 31–45, especially at 34.

⁸⁰ Cohen, *Globalization and Sovereignty*, 161.

legal pluralism – the relationship between sovereign state, human rights and global governance institutions. In Ghana, for example, recent events in society suggest that there has been growing awareness of people’s basic human rights and an increase in citizens’ appeals to international human rights regimes.⁸¹ But the challenge is that, like most postcolonial African and other nation-states, contemporary Ghana often is faced with the need to balance its national laws with customary and religious values.⁸²

In a secular society there ought to be not only separation of religion, law and the state,⁸³ but also equal acknowledgement of the values and the legitimacy of these distinct domains.⁸⁴ Yet, as already noted, whereas national authorities recognise the reality of the coexistence of the different but overlapping legal orders, they often project the uniqueness of civil law structures by restricting the power of religious and customary authorities to intervene in the affairs of the nation-state.⁸⁵ Cohen, for example, was particularly suspicious of legal pluralists whom she accused of softening the necessity of a “unitary hierarchical concept of law.”⁸⁶ Among the weaknesses of legal pluralists’ arguments, Cohen noted that:

Ascribing the qualifier ‘legal’ to regulations imposed by the powerful allegedly enhances their hegemony, by legitimating their rule while casting those who resist or challenge power-enabling rules in the name of greater responsiveness, equality, justice, or accountability, as law-breakers.⁸⁷

In its place, she defended the need for sovereign equality in terms of “constitutional pluralism,” that is, “a complex of political communities within an overarching political association of communities each of which has its own legal orders of constitutional quality.”⁸⁸ This view provides a useful conceptual tool for analysing the effects of the state privileging its civil law structures over other normative legal norms. It will be seen that in a modernising

⁸¹ Ivy Benson, “Tsikata Finally Wins Supreme Court,” *Ghanaian Chronicle*, January 20, 2011.

⁸² Abdullahi Ahmed An-Na’im, “State Responsibility under International Human Rights Law to Change Religious and Customary Law,” in *Human Rights of Women: National and International Perspectives*, ed. Rebecca J. Cook (Philadelphia: University of Pennsylvania Press, 1994), 167–88, especially at 177

⁸³ Donald Eugene Smith, *India as a Secular State* (Princeton: Princeton University Press, 1963), 3–6.

⁸⁴ Rajeev Bhargava, “States, Religious Diversity, and the Crisis of Secularism,” *Hedgehog Review* 12, no. 3 (Fall 2010): 8–22.

⁸⁵ Bhargava, “States, Religious Diversity, and the Crisis of Secularism,” 12.

⁸⁶ Cohen, *Globalization and Sovereignty*, 64.

⁸⁷ Cohen, *Globalization and Sovereignty*, 62.

⁸⁸ Cohen, *Globalization and Sovereignty*, 26, 66, 70.

nation-state still attached to the ideals and values of the old sacred society, legal and political marginalisation of religion and custom makes people more suspicious of the new law. This is particularly the case in relation to that which comes through international human rights.⁸⁹ As already noted, in an emerging secular state, attempts to introduce a “universal” principle which is held as inconsistent with local conceptions of justice is interpreted as corrupting the moral foundations of the society.⁹⁰ This thesis engages Cohen’s ideas to understand the difficulties associated with the application of different norms in a particular area. Her work also provides insights into how each of the different sources of law in Ghana poses challenges when it comes to their applications in determining specific cases. I build on this work to explore the wider legal and human rights problems associated with multiple forms of sovereignty and legal authority in contemporary Ghana.

The works reviewed above help to clarify the character of the controversies surrounding the conflicts between the continuing contemporary human rights norms and customary law.⁹¹ These works also indicate that the socio-legal, political and more importantly religious and legal structures of indigenous African societies were irrevocably changed by contact with European colonisers. These works inform the claims made in this thesis. They also help me to establish the key current gaps that my work addresses, which I do by exploring the impact that the transplantation of the European legal system has on human rights development.

5. Chapter Outline

My analysis in this thesis is structured as follows. Chapter one addresses the question of the nature and sources of normative orders and authority in contemporary Ghana. It provides a detailed descriptive and interpretative account of the evolution of legal pluralism in this society. It notes that the current plural normative structures of Ghana are a product of years of interpenetrations, interactions and encounters between British law, non-traditional religious norms, customary norms, and international human rights regimes. All these different but overlapping forms of law lead to diverse and often competing ideas about society and

⁸⁹ Abdullahi Ahmed An-Na’im, “An Inclusive Approach to the Mediation of Competing Human Rights Claims,” *Constellations* 20, no. 1 (2013): 7–17.

⁹⁰ Joshua N. Kudadjie, *Moral Renewal in Ghana: Ideals, Realities and Possibilities* (Accra: Asempa Publishers, 1995), 1.

⁹¹ T.W. Bennett and T. Vermeulen, “Codification of Customary Law,” *Journal of African Law* 24, no. 2 (Autumn 1980): 206–19.

responsibility. They also become the basis through which power, influence, claims and rights are contested in contemporary Ghanaian society. These contestations raise issues of legal challenges, political sovereignty, and individual rights and communal self-determination. The chapter also examines the historical foundations of the development of the various laws in society and links them to the thesis' overall arguments.

The coming together of diverse ethnic, cultural and religious groups in contemporary Ghana has brought about diverse frames of normative orders. These non-state normative orders, in turn, challenge the imposed supremacy of civil law structures and nation-state sovereignty. Chapter two, therefore, explores the question of how the various normative authorities have engaged each other for recognition and jurisdictional influence. It also assesses the interrelationships of the various normative orders in society. A key feature of this chapter in relation to the overall thesis is that it helps frame the analysis made in subsequent chapters especially when it comes to the nature of tensions that occur between and among the various religious and legal traditions in society.

Chapter three examines how the clash of legal norms and the changing society leads people to rely on religious imaginations or worldviews. Focusing on the phenomenon of child witchcraft, the chapter suggests that child witches are not mere "products" of the uncertain socioeconomic, political and legal conditions, but rather "responders" to these uncertainties. For child witches, then, the chapter argues, the spiritual realm becomes a context for them to be socially engaged. In the face of changing realities in society, child witches resort to spiritual means to gain access to the socioeconomic, political and legal spheres. The chapter departs from previous studies by proposing a reconsideration of the notion of agency, pushing for the need to take into account victims' own responses to certain determinants in society. It compares the Ghanaian situation with cases elsewhere in order to articulate the uniqueness of the Ghanaian context. It does so by focusing on the religious-legal contexts of the societies under comparison.

Chapter four carries further the investigation into how religious convictions and customary worldviews are infused with legal meaning and authority. It considers the regulation of same-sex marriage and the implications of this for individual, national and international human rights laws. The chapter demonstrates how the legalisation of same-sex partnerships has become a legal contest between religious groups, the government and international communities. The concluding chapter assesses the overall contributions of the thesis, emphasising on the arguments, analysis, discussions and insights the thesis have for

the legal enforcement, political mobilisation, and development of human rights. It also crucially focuses on the normative dimension of tensions I discuss. It addresses a significant scholarly and policy question: “How can the tensions be managed?” In this context, the chapter demonstrates that while legal pluralism as a legal concept provides scholars and actors with a descriptive or explanatory framework, it is also an essential means for addressing the tensions the thesis has identified.

This Introductory chapter has set the context for the discussion in this thesis by operating on the major proposition that while religion serves as a hindrance to Ghana’s secular ideals, it at the same time aids in the development of human rights standards and legal enforcement. To be able to establish this, the chapter prepared the ground to reflect on the need to interrogate the ambivalent role of religion in contemporary Ghana taking into consideration the historicity of the encounter between traditional societies and introduced religious, legal and political systems that followed Islam, Christianity and colonialism. In the chapter that immediately follows, I seek out to explicate how this encounter led to the emergence of plural normative legal norms which have been a major factor for tensions in contemporary Ghana.

CHAPTER ONE: THE INTERACTIONS OF STATE AND NON-STATE LEGAL NORMS

1.1 Introduction

In this chapter, I examine in detail the development of plural legal orders in contemporary Ghana. I focus particularly on the processes through which Christian norms, British law and postcolonial civil law structures have competed and operated alongside customary law. I pay particular attention to how introduced religious, legal and political systems resulted in the diminution of traditional customary normative systems. I examine the impact that the introduction of normative systems have had on Ghanaian indigenous societies, especially on how traditional political and customary systems have been shaped to reflect introduced legal systems and statecraft. This analysis will lead to conclusions on the nature of law in contemporary Ghana and the diverse sources of this law. Knowledge of the differing components of law and their sources and authority is crucial in addressing certain key questions: “What are we talking about when we refer to Ghanaian statecraft?” “Do different notions of law lead to legal disputes or cases?” Addressing such questions helps us identify the foundations of certain types of tensions in society, which will be the focus of Chapter two.

I argue that an understanding of the historical interactions between the various components of legal norms elucidates the character of religion-law tensions in Ghana. Focusing on Akan sacred traditional states as a reference point, the chapter combines exploratory and descriptive analysis of how traditional societies in Ghana have struggled with imposed legal and political systems. I discuss the traditional legal conceptions in terms of their religious spiritual foundations, how natural forces and other nonhuman agents infuse normative orders and authority with legal powers. This provides insights into the role religion plays in legitimating legal norms and in resisting what the society holds as inconsistent with its understanding of law and order.

1.2 Traditional Legal Conception and Agents of Law and Order

In the previous chapter, I contended that many pre-encounter African societies were sacred sovereign states. Statecraft during this period was built around the laws and authority of

spiritual forces and personal ties rather than bureaucracy.¹ In this section, I discuss how the traditional state was organised in connection with the sources of normative authority. I demonstrate how religion, morality, politics, and legal norms were intertwined, and the ongoing significance of these interconnections. At the beginning of this thesis, I raised concerns over the contradictory nature of contemporary Ghanaian secular state suggesting the need to reflect on whether the words “religion” and “law” have the same meanings in this society as elsewhere. In the following, I take this issue up contending that because religion and law complexly cross-over and cross-fertilise each other² in this society, law becomes problematic to define particularly in ways that would be acceptable to a legal mind unfamiliar with this terrain.³

Traditional Ghanaian society holds the view that the intimate relationship between humankind and the spiritual forces provides a basis for law and order. Legal and moral norms are held to have traditionally received their sanction from the Supreme Being, the deities and the ancestors; these norms are implemented by traditional authorities and the society as a whole.⁴ As just noted, Akan legal norms are also economic, political and social, but importantly, religious in nature. According to Akan legal philosophy, breaches in society are divided into two broad categories, viz. *oman akyiwadee* (national taboo) and *afisem* (household matters, domestic affairs).⁵ The former belong to criminal cases such as murder, suicide, certain sexual offences, assault, abuse, imprecating a chief, treason and cowardice, witchcraft, among others.⁶ These breaches affect not only societal members but also affronts the spiritual agencies who are held to own and control the land. *Afisem*, on the other hand, are offences that affect human agencies and include theft including adultery and some sexual

¹ T.C. McCaskie, *State and Society in Pre-Colonial Asante* (Cambridge: Cambridge University Press, 2003), 14; Patrick Chabal and Jean-Pascal Daloz, *Culture Troubles: Politics and the Interpretation of Meaning* (Chicago: The University of Chicago Press, 2006), 264.

² For a discussion on the “crossing-over” and “cross-fertilisation” of religion and law, see, for example, John Witte Jr, *God’s Joust, God’s Justice: Law and Religion in the Western Tradition* (Grand Rapids and Cambridge: William B. Eerdmans Publishing Company, 2006). See also John Witte Jr, “Law and Religion: The Challenges of Christian Jurisprudence,” *University of St. Thomas Law Journal* 2, no. 2 (Spring 2005): 439–52.

³ Rattray, *Ashanti Law and Constitution*, 1.

⁴ Kofi Asare Opoku, *West African Traditional Religion* (Accra: FEP International Private Ltd, 1978), 152–66; Kwame Gyekye, *African Cultural Values: An Introduction*, Reprinted (Accra: Sankofa Publishing Company, 2003), 55.

⁵ Rattray, *Ashanti Law and Constitution*, 294–95, 317–18; Busia, *The Position of the Chief*, 65–74.

⁶ Rattray, *Ashanti Law and Constitution*, 294.

acts; certain kinds of abuse, including slander or tale-bearing; certain kinds of assault; cases regarding property; pawning, loans suretyship, and recovery of debts.⁷

Some of the offences may overlap in the categorisation indicated above, but the seriousness of a breach depends on the offended party. Breaches or actions that offend the individual, the living member of society, are thought of in terms of “torts” or largely, civil cases.⁸ The same offence, however, becomes a (grievous) sin or a taboo when the offended party is a spiritual agent of the land. The concept of crime comes under the category of offences against the ancestors and other territorial spirits of the land. Offending the territorial spirits, therefore, has corporate consequences.⁹ The society believes that failure to avert such a breach using the customary law of the community would lead to the divine forces venting their anger and pronouncing misfortune (*musuo*) on the land.¹⁰ The living are bound by the religious customs of the land, and are compelled to respond to this. According to R.S. Rattray, a pioneer researcher into Akan customary law and practices, in Akan legal conception, violations of what constitutes “the civil law” in British legal systems received religious sanctions and vice versa.¹¹ This provides a telling example of how religious and legal normative values cross-over and cross-fertilise each other in this society. I bring this categorisation of breaches into the discussion as a framework to clarify the issue of whether or not in discussing law in contemporary Ghana, we are discussing the same concept as is found elsewhere. This categorisation also helps to explain why, in spite of growing democratisation of contemporary Ghana, some traditional religious actors treat certain breaches as more serious than others and why they are ready to rally their people to fight against what they believe to be offensive violation of their legal norms. In the discussion that follows, I offer an overview of specific sources and agencies of legal norms in traditional Akan society.

⁷ Rattray, *Ashanti Law and Constitution*, 317.

⁸ Rattray, *Ashanti Law and Constitution*, 309. Owusu Brempong, “Chieftaincy and Traditional Taboos: An Empirical Approach,” in *Chieftaincy in Ghana: Culture, Governance and Development*, ed. Irene K. Odotei and Albert K. Awedoba (Accra: Sub-Saharan Publishers, 2006), 213–30.

⁹ A.B. Ellis, *The Tshi-Speaking Peoples of Gold Coast of West Africa: Their Religion, Manners, Customs, Laws, Language, Etc* (London: Chapman and Hall, 1887), 10–11.

¹⁰ Rattray, *Ashanti Law and Constitution*, 310; Busia, *The Position of the Chief*, 115.

¹¹ Rattray, *Ashanti Law and Constitution*, 2.

1.2.1 *The Supreme Being and Moral Sanction*

The sovereignty of God and his laws is held to underpin the Akan notion of law and order to which all assent. In terms of moral sanctions, scholarly opinion is divided on the proper place of the Supreme Being in Akan legal and moral philosophy. Some suggest that the Supreme Being does not appear to be the immediate giver of law.¹² Matters of right and wrong, the argument goes, are not dictated by God; God does not tell an individual what to do or what not to do. Well-established oral and written traditions in Akan religion, however, also have it that *Nyame*, the Supreme Being, is the creator of all things, and the originator of everything that is seen or made, that is, including the law and moral norms.¹³

It became clear during this research that many people subscribe to the general belief in God-given laws which are thought to be intrinsic, and are manifested as the conscience. It is infrequent to hear people making reference to the common Akan maxim, *obi nkyere abɔfra Nyame* (no one teaches the child to know God) in their conversations to support this claim.¹⁴ In other words, the laws of society are held to have been given by God and readily accessible through the conscience; they are intrinsic. The philosopher and lawyer, J. B. Danquah, has, for example, noted that the Akan cannot claim justification of their religion as perfect or complete without referencing a divine ancestry of whatever is described.¹⁵

The belief that God is the immediate lawgiver is not shared by all in society. Yet, there seems to be a widely held view that God is the upholder of moral law.¹⁶ There is also a commonly held belief that the Supreme Being is the final arbiter of justice but because he is “remote and allocative rather than approachable and flexible,”¹⁷ his function in the affairs of the people – in lived existence – has essentially been held as judgemental. There is the sense

¹² Kwame Gyekye, *An Essay on African Philosophical Thought: The Akan Conceptual Scheme*, Revised Edition (Cambridge: Temple University Press, 1995), 138.

¹³ Kofi Asare Opoku, *West African Traditional Religion* (Accra: FEP International Private Ltd, 1978), 9. For alternative view on the role of God in Akan creation mythology, see Jan G. Platvoet, “Nyame Ne Aberewa: Towards a History of Akan Notions of God,” *Ghana Bulletin of Theology*, New Series, 4 (December 2012): 39–70 (posits that “the Akan belief in God as creator is a more recent arrival which Akan believers added to their earlier beliefs about God” with the introduction of monotheistic Islam and Christianity), 44.

¹⁴ Some translations render this proverb as “No one shows a child the sky, (the abode of the Supreme Being).” See R.S. Rattray, *Ashanti Proverbs: (The Primitive Ethics of a Savage People) Translated from the Original with Grammatical and Anthropological Notes* (Oxford: The Clarendon Press, 1916), 24.

¹⁵ J.B. Danquah, *The Akan Doctrine of God* (London: Lutterworth Press, 1944), 169.

¹⁶ Gyekye, *An Essay on African Philosophical Thought*, 138.

¹⁷ McCaskie, *State and Society*, 107.

that the Supreme Being, who is a judge and final arbiter, gives people due recompense for their actions. Informants largely cited the commonly held imprecatory words *Nyame betua wo ka*, (God will give you due recompense) to “prove” this point.¹⁸ This coheres with Dennis Warren’s view that while among the Bono of Takyiman there is a wide variety of shrines dedicated to the minor deities, central emphasis is placed on *Nyame* rather than on the deities. That the name of *Nyame* – and not the other deities – is used in imprecation, he suggests, evidences the belief that God judges and oversees certain moral activities.¹⁹ This claim further confirms Rattray’s view that in Akan religion, the Supreme Being is too “remote and too powerful to directly have dealings with mankind, but he distributes for their benefit a little of his power.”²⁰ As such, shrines of deities, several of which were previously scattered across various communities, were dedicated to the Supreme Being. But, technically, in Akan religion, *Nyame* has no temple or sanctuary dedicated to him. Priests or custodians of the minor deities are the intermediaries between man and God.²¹ Yet, the belief is that each and everyone “knows that he or she has a direct appeal to *Onyankopon*, not necessarily through the fetish priest, as would be the procedure were the fetish being appealed to.”²² The human being is believed to have been created by *Nyame* and that all people, including the deities are his children.²³ As I later contend, ascribing a divine or sacred origin to the human person is a religiously and customarily appropriate concept which is fundamental to the development of human rights and legal enforcement especially in the local context.

Even though the juridical notion of the Supreme Being is significant for the development of human rights and legal enforcement, in contemporary times, diverse and overlapping understandings and interpretations reflecting differing religious traditions brings about tensions in society. As I show below, with the introduction of a monotheistic God into society, a different notion and approach to the Supreme Being emerged with different normative systems and authority. Whereas conceptual similarities to the above attributes exist

¹⁸ See also Gyekye, *An Essay on African Philosophical Thought*, 139.

¹⁹ Dennis, “Bono Shrine Art.”

²⁰ Rattray, *Ashanti Proverbs*, 22.

²¹ Rattray, *Ashanti Proverbs*, 21; Meyerowitz, *The Sacred State of the Akan*, 81.

²² Rattray, *Ashanti Proverbs*, 23.

²³ Gyekye, *African Cultural Values*, 150.

in missionary Islam and Christianity, for example, traditional notions usually are reified or delegitimised by adherents of these monotheistic religions. Imported conceptions of the Supreme Being have also introduced a different notion of sovereignty, a situation which challenges the primal notion of territorial and chiefly sovereignty.

1.2.2 The Deities

Belief in the retributive role of the nature spirits provides a significant source and legitimisation of law in Akan societies. A discussion of the customary legal norms therefore warrants the inclusion of the role of the deities in Akan legal ontologies. In the Akan hierarchy of supernatural forces, after *Nyame* come the deities (the *abosom*).²⁴ The *abosom*, we have just noted, are viewed in human terms as the children of *Nyame*.²⁵ In Akan religion, the shrines of these *abosom* play a central role in political organisation and legal enforcement. They generally serve as sacred altars through which people communicate with God in anticipation of particular favours.²⁶ The shrines are also the channels through which God reveals any hidden deviant behaviours of a person to the wider society. These shrines serve as the main medium through which personal problems and grievances are publicly communicated.²⁷ Shrines also function as the altars upon which offerings such as libations and piacular sacrifices are offered. These sacrifices and offerings to the *abosom* envisage the assurance that evil spirits or misfortune from a person or lineage may be exorcised or averted, thereby providing relief for those searching for security in their uncertain social, economic and political life.²⁸ The implications this has for contemporary Ghanaian society, which has become religiously plural, will be assessed more fully in Chapter two. It will focus especially on the tensions that result from the application of the norms of the deities in a society that has become religiously diverse.

²⁴ Some accounts refer to the *abosom* as the gods, tutelary spirits, or minor deities.

²⁵ McCaskie, *State and Society*, 108.

²⁶ William Bosman, *A New and Accurate Description of the Coast of Guinea: Divided into the Gold, the Slaves and the Ivory Coasts*, Fourth Edition (London: Frank Cass and Co., Ltd, 1967), 146.

²⁷ Dennis, "Bono Shrine Art," 30.

²⁸ Margaret J. Field, *Search for Security: An Ethno-Psychiatric Study of Rural Ghana* (London: Faber and Faber Ltd, 1960), 17, 107; Dennis, "Bono Shrine Art," 30.

The deities are held to be a source of swift moral sanction. They are traditionally anthropomorphised as executioners.²⁹ Because of the fear of the instant punitive sanction of the deities, traditional Akan society strives to always live in order and harmony. The Akan *abosom* abhor wrongdoing and would not “view the most atrocious crimes with equanimity for they punish wrongdoers.”³⁰ Convictions concerning the power of these deities thus provide a basis for law and order in society. The traditional Akan believe that unlike the deity of the Abrahamic traditions who postpones moral judgement until the end of world, Akan deities fast-track their judgements.³¹ The deities are traditionally feared as impatient of certain socially and customarily defined deviant behaviours and practices such as witchcraft and sorcery and therefore do not wait till the final day of judgement.³²

My fieldwork confirms the above notion of the deities with a considerably vivid example from Kranka, a town in the Brong Ahafo region. A shrine attendant at Taa Kora shrine, Tanoboase, the traditionally held as the birthplace of all Akan river deities, narrated the legal significance of this town. According to him, Kranka is a vital symbol of the highest legal decisions and determination of cases of societal wrongs of the area.

Significantly, this town is a site of an influential traditional shrine where serious cases were previously tried. Depending on their offence, in almost all cases, those found guilty were made to undergo serve punishments including execution. Of particular importance, my shrine informant recounts, is the Brakune deity.³³ This shrine specialises in executing those who were feared as troublemakers of society. Such people included litigants and witches. The customary belief is that alleged witches who are believed to have been executed by the deities cannot be buried until appropriate rituals are performed. Witches who die in the hands of this deity are denied burial in a coffin. In times past, according to my informants, it used to be that broken bottles, thorns and other objects were put in the grave before burial and; the deceased was also buried in the same attire they wore before dying. Such people were

²⁹ McCaskie, *State and Society*, 118.

³⁰ Opoku, *West African Traditional Religion*, 1978, 157.

³¹ Atiemo, *The Inculturation of Human Rights*, 105.

³² Interview at A.T. at Tanoboase, March 8, 2016.

³³ It is also variously referred to as Kunde or Kune in the literature. See for, example, Jean Allman and John Parker, *Tongnaab: The History of a West African God* (Bloomington & Indianapolis: Indiana University Press, 2005), 137.

labelled as possessors of certain “special” powers that make them prone to antisocial behaviours. As such, they had to be eliminated or treated differently – even in death – from the circle of the wider community for the sake of social cohesion.³⁴

Fundamental to traditional Akan notion of law and order is that non-propitiated offences against the deities enrage these spiritual forces, thus posing a threat to the entire society. The law-making, vengeance-seeking character of the *abosom* are held not only to bring about order and social justice but also to spiritually facilitate cohesion of the Akan population.³⁵ And so even in contemporary times where the national Constitution is held as supreme law, when individuals rise up in defence of certain rights or against some forms of customary violations, they are in turn, as Atiemo has suggested, “fighting for the rights of the gods.”³⁶ Such views about the normative legal functions of the deities provide a framework necessary for the current nature of legal pluralism and the struggles associated with it. Certain tensions, occasionally violent, occur as a result of the above convictions about what the laws of the deities mean to contemporary society.

1.2.3 The Ancestral Spirits

In Akan legal hierarchy, the ancestors occupy an important place. Customary law, often called ancestral law, is believed to gain its greatest legitimacy from the ancestors, who mainly are the original founders of the particular community in which the law operates. Customary law, thus, embodies the corpus of normative injunctions believed to have been passed on by the primal ancestors. Among the spiritual forces, the ancestors are believed to be the closest means through which the spirit world becomes personal to members of community.³⁷ As such, they are held in high esteem and each family, lineage or state has a list of sacral ancestors who occupy especial positions. Mutual existence, in a sense, is believed to continue between the living and the dead as the latter continue to have interests in the affairs of the

³⁴ Atiemo, *The Inculturation of Human Rights*, 121 provides a similar version from the *Edzibem Posuban* (the shrine of the not guilty) at Gomoa Antseadze in the Central region of Ghana.

³⁵ Dennis, “Bono Shrine Art,” 31.

³⁶ Abamfo Ofori Atiemo, “Fighting for the Rights of the Gods: Tradition, Religious Human Rights, and the Modern Nation-State in Africa – A Ghanaian Case Study,” in *Trajectories of Religion in Africa: Essays in Honour of John S. Pobee*, ed. Cephas N. Omenyo and Eric B. Anum (Amsterdam and New York: Rodopi, 2014), 237.

³⁷ John S. Mbiti, *African Religions and Philosophy*, Second Revised and Enlarged Edition (Gaborone: Heinemann Education Botswana (Publishers) (Pty) Ltd, 1989), 82.

living; they continue to live in the world of the spirits much the same way as on earth.³⁸ They are celebrated as bilingual spirits, speaking the language of their living members as well as that of the deities.³⁹ Because the traditional African ancestors are held as guardians who constantly watch over the affairs, traditions, ethics and activities of the lineage and community, Mbiti has labelled them as the invincible moral police.⁴⁰

The ancestors are held to be the custodians of the laws and customs of their society. In Akan tradition, for example, people are aware that the ancestors constantly watch over their activities. They also believe that one day, they will die and appear before these spiritual agencies. They believe that the ancestors will ask them to give account of their earthly life, particularly of the individual conduct toward members of the lineage.⁴¹

Owing to their privileged position in the land of the spirits, there are certain things that must not be done to the ancestors. This belief serves as a suitably persuasive sanction of morality in society because the ancestors are believed to rebuke or punish with sickness and other forms of misfortune those who fail to live by their moral instructions. K.A. Busia narrates the story of a woman who before her death admits her unworthiness in the presence of her ancestors. The woman confesses:

I was dangerously ill. I became dumb and could not speak. For two weeks I had not spoken. I could not eat or drink. I could only drink a little soup, which had to be pushed down my throat.... I had been afflicted with sickness because the ancestors were displeased with me.⁴²

Nonetheless, sincere commitment to Akan repertoire of ancestral laws are held to bring material benefits to the individual and community. They bless family members with children, plentiful harvests and good luck.

In contemporary Akan society, however, the application of ancestral law in some communities has been a major source of tension especially between traditionalists and Christians. While less emphasis is placed on the ancestors due to social change, education and other modernising factors, because customary law is an essential component of Ghanaian law, these ancestors continue to occupy a centre stage in the discourse of Ghanaian legal

³⁸ Busia, *The Position of the Chief*, 23.

³⁹ Mbiti, *African Religions and Philosophy*, 82.

⁴⁰ Mbiti, *African Religions and Philosophy*, 82.

⁴¹ Busia, *The Position of the Chief*, 25.

⁴² Busia, *The Position of the Chief*, 25.

pluralism. Meanwhile, they often are cast in pentecostal discourse as purveyors of demonic influences and representing the past of which believers must break away from.⁴³ For most Christians, ancestral laws are viewed as inconsistent with the “true” laws of God given through Christ a situation that results in tensions.

1.2.4 Earth Goddess and Minor Spirits

Another general factor describing traditional Akan sovereignty and its legal systems is the emphasis on the land, and what it means for a community. The traditional cosmology regarding the land is also significant as it provides the basis for the principle of contemporary Ghanaian customary land law.⁴⁴ In Akan religion, the sky and the earth, for example, are their two most important deities.⁴⁵ Thursday is generally held to be the natal day of the mother earth goddess hence the name *Asase Yaa* (*asase*, earth, land, and *Yaa*, feminine proper name for those born on Thursdays). Because of what the land represents for the people, traditionally, offenders of the norms regarding mother earth goddess are severely punished. Sex in the bush, even with one’s own partner, for example, is tabooed as it affronts the spirit of the earth goddess and potentially affects the yield of the land. An evangelist intimated noted for his severe condemnation of traditional beliefs and practices informed me that despite his tough stance on the traditional practices, part of his churchly laws on respect for the land conform to the ancestral law. The church’s law on sexual morality include forbidding members from having sex in the bush, or near a riverside. He labelled these offences as a “red taboo”⁴⁶ in his church.⁴⁷ Robert Fisher, citing the Ghanaian philosopher, Kwasi Wiredu, has explained that traditional laws of these nature were meant to restrict sex-starved men who may be tempted to rape vulnerable young women in the unpoliced fields.⁴⁸

⁴³ Birgit Meyer, “Make a Complete Break with the Past:’ Memory and Post-Colonial Modernity in Ghanaian Pentecostalist Discourse,” in *Memory and the Postcolony: African Anthropology and the Critique of Power*, ed. Richard Werbner (London and New York: Zed Books, 1998), 182–208, especially at 186. See also J. Kwabena Asamoah-Gyadu, “Mission to ‘Set the Captives Free’: Healing, Deliverance, and Generational Curses in Ghanaian Pentecostalism,” *International Review of Mission* 95, no. 570/571 (October 2004): 389–406.

⁴⁴ N.A. Ollennu, *Principles of Customary Land Law in Ghana* (London: Sweet and Maxwell, 1962), 142.

⁴⁵ R.S. Rattray, *Ashanti* (Oxford: The Clarendon Press, 1923), 214.

⁴⁶ Traditionally red is a symbol of danger, indicating the seriousness of this particular taboo.

⁴⁷ Interview with Evangelist A at Techiman, 15 February 2015.

⁴⁸ Robert B. Fisher, *West African Religious Traditions: Focus on the Akan of Ghana* (Maryknoll: Orbis Books, 1998), 109. See also Kwasi Wiredu, “Morality and Religion in Akan Thought,” in *African-American Humanism: An Anthology*, ed. Norm R. Allen Jr., (Burlington: Prometheus Books, 1991).

The fear of the laws of the earth goddess, therefore, traditionally serves to restrict behaviour inimical to communal morality and social cohesion.

Besides the spirit of the mother earth goddess, there is also the belief in other minor spirits that dwell in talismans (*asuman*) and certain specific preventive medicines (*dudo*).⁴⁹ These natural forces, along with their human custodians aim at maintaining the social norms and are supposedly active in neutralising spiritual entities responsible for antisocial behaviours, disorder and deviance.⁵⁰ It is understandable that in a society where the fear of evil forces such as witchcraft is pervasive, such protective elements are held by many families to help them ward off evil spirits from their lives. But in a society that has chiefly become pentecostalised, these elements and beliefs also have implications for law and order when they are cast as abodes of demons in society.

1.2.5 The Usages of the Community

An essential source of Akan customary law is the custom of the people which is the repertoire of usages of the community. The society's notions of good and evil are determined not only by the dictates of the spiritual forces but also by the social needs and realities. Every action in society, whether or not it is sanctioned by spiritual agencies, must bring about or lead to social well-being. The community serves as an/the agent for enforcing law and order. The existence of human community necessitates some form of morality to guide relationships between individuals. As such, law and morality, in Akan society, is said to be a product of social relationships and communal usages. Notions of morality are said to be "intrinsically social."⁵¹ As Gyekye has made clear, within the context of Akan "social and humanistic ethics," an action is considered morally good if it largely enhances the welfare of the society, and encourages "solidarity, and harmony in human relationships."⁵² Akan discourse on morality, he says, reveals a "conviction of a nonsupernaturalistic – a humanistic – origin of morality."⁵³ The wellbeing of the community, in consequence, serves as the sole criterion of goodness in society.

⁴⁹ Dennis, "Bono Shrine Art," 28.

⁵⁰ Robert A. Lystad, *The Ashanti: A Proud People* (New Brunswick: Rutgers University Press, 1958), 178; Dennis, "Bono Shrine Art," 28.

⁵¹ Gyekye, *African Cultural Values*, 55.

⁵² Gyekye, *An Essay on African Philosophical Thought*, 132.

⁵³ Gyekye, *An Essay on African Philosophical Thought*, 132.

Corporate group responsibility helps maintain communal moral standards. One's responsibility for violating the norms of community involves his entire household including his animals and property.⁵⁴ Inexplicable death or sudden misfortune that befalls the family may be sufficient to suspect the wrath of an aggrieved spirit whose norms have been violated by a member of the community. But it is also apparent that in this society, rights to certain actions that are of a purely private affair are not wholly curtailed. Individual rights are limited when there is every reason to suspect that such actions can, or do, affect other innocent members of society.⁵⁵ Thus, while society acknowledges the significance of the rights of the individual, it does not do so to the detriment of shared communal values or collective interests. This notion provides a framework to explore the various arguments with regard to same-sex partnerships, for example. There are concerns that since the activities of same-sex partners, for example, do not affect or hurt innocent members of the society, on what basis does society ban such a practice? In traditional custom, however, the lineage gives "a feeling of deep rootedness and a sense of sacred obligation to extend the genealogical line."⁵⁶ In this sense, sexual relationships that do not promote the extension of lineage are viewed as a breach of communal sacred obligation.

The primacy of corporate society is such that the traditional Akan chief, for instance, has to carry out the will of his ancestors. In the old sacred state, majority of cases of executions indicated the general fear that the offences would bring about *musuo* (misfortune) upon the land and grief to the spiritual agencies. The general idea underlying the law on the death penalty which was previously invoked, for example, has been summarised by Busia thus: "Death was the penalty meted out in Ashanti for offences against the gods – sacrilege, murder, incest or 'cursing the king.' The misfortune which these crimes were believed to cause was palpable enough in the case of the breach of the oath of allegiance – national annihilation."⁵⁷ Such breaches have to incur the moral rebuke of all societal members. Members of the community have to contribute to avert the harmful consequences that befall

⁵⁴ Mbiti, *African Religions and Philosophy*, 201.

⁵⁵ Kwame Gyekye, *Tradition and Modernity: Philosophical Reflections on the African Experience* (Oxford: Oxford University Press, 1997), 65.

⁵⁶ Mbiti, *African Religions and Philosophy*, 103.

⁵⁷ Busia, *The Position of the Chief*, 55.

the society. Traditional Akan judicial process was a communal affair to which all participated.

In contemporary times, the general contribution meant to remedy a communal catastrophe has been the bone of contention between some members of the non-traditional religions, particularly between pentecostal Christians and traditionalists. With the historic encounter, the legal norms of society became affected in ways that challenged the authority of the traditional leaders even if these laws were still dominant and influential. The introduction of non-traditional religious norms and values particularly Christian ideals led to a competition between these and the traditional socio-legal and political systems.

1.3 Christian Influences

By the late fifteenth century when the first European explorer-traders, the Portuguese arrived, much of what is now northern Ghana had already been Islamicised; and indeed some states of the present day Akanland have also had contact with Muslim emissaries particularly through trade. In the context of the Akan areas, in terms of legal norms, the impact of early mission Islam and Christianity, was insignificant; it was only but “a thin veneer.”⁵⁸ Formal Christian missionary activity started around the middle of the eighteenth century particularly in the coastal areas. When it finally penetrated into the Akan states in the hinterlands, diverse tensions developed between the early Christians, both missionaries and Akan converts, and the host societies. For example, in 1876, the *Asantehene* Mensah Bonsu, expressed his unhappiness about the introduction of Christianity in his kingdom. Alongside others, he argued that mission Christianity would make his people disobedient and arrogant subjects. In his encounter with the Wesleyan Methodist missionary, Reverend T.R. Picot, the king argued that:

The Bible is not a book for us. God at the beginning gave the Bible to the White people, another book to the Cramos (? Muhammadans), and the fetish to us....We will never embrace your religion, for it would make our people proud. It is your religion which has ruined the Fanti country, weakened their power, and brought down the high man on a level with the low man.⁵⁹

⁵⁸ K.A. Busia, “The Ashanti,” in *African Worlds: Studies in the Cosmological Ideas and Social Values of African Peoples*, ed. Daryll Forde (Oxford: Oxford University Press, 1954), 208. For works on the early encounter between the Akan and Islam, see Ellis, *The Tshi-Speaking Peoples of Gold Coast of West Africa*, 331–32; Raymond A. Silverman and David Owusu-Ansah, “The Presence of Islam among the Akan of Ghana: A Bibliographic Essay,” *History in Africa* 16 (1989): 325–39.

⁵⁹ G.G. Findlay and W.W. Holdsworth, *The History of the Wesleyan Methodist Missionary Society*, First Edition, vol. iv (London: The Epworth Press, 1922), 175. See also Hans W. Debrunner, *A History of Christianity in Ghana* (Accra: Waterville Publishing House, 1967), 180.

The king's concerns reflected the general anxieties in Asante, Akyem Abuakwa and other Akan societies as a result of the encounter with mission Christianity traces of which exist today.⁶⁰ In this section, therefore, I look at how Christian normative values became a source of struggles between traditionalists and Christians and the implications this had for society. I assess especially how Christian teachings introduced another dimension of sovereignty – the sovereign power of the Christian monotheistic God. I use this as a framework for situating some of the current tensions between Christian and traditional religious adherents.

Some have blamed the early Christianity in indigenous African societies for starting from the premise that indigenous social, political, cultural and religious institutions were spiritually unwholesome and as such they ought to be “replaced with indecent haste.”⁶¹ There is little doubt that through collaboration with the colonial administration, early Christianity made some significant inroads, as far as abolishing some of the practices such as human sacrifice, human pawn,⁶² domestic slavery and other activities that limited the rights of the people, are concerned.⁶³ Yet Christian teachings and activities provided the grounds for the disregard for the religious bases of traditional statecraft and legal norms.

Christian values challenged the authority of chiefly actors in society as their powers to impose religious-customary sanctions were undermined by the introduction of this new religion. Some Christians began to give more attention to their new religious leaders than the sacral ruling class of society.⁶⁴ In situations where churchly teachings and traditional customary norms clashed, converts opted for the former, putting value on the decisions of Christian leaders. Where traditional sanctions had to be applied, some converts refused them on grounds that these customary punishments contradicted their newfound beliefs. This included matters that involved traditional oath swearing by parties. Converts also refused to attend to chiefs' summons preferring that such summons – if they ever be accepted at all – be

⁶⁰ Kofi Affrifah, “The Impact of Christianity on Akyem Society, 1852-1887,” *Transactions of the Historical Society of Ghana*, 16, no. 1 (June 1975): 67–86.

⁶¹ S.R.B. Attah Ahuma, *The Gold Coast Nation*, October 13, 1917 quoted in David Kimble, *A Political History of Ghana: The Rise of Gold Coast Nationalism, 1850-1928* (Oxford: Oxford University Press, 1963), 160.

⁶² Rattray, *Ashanti Law and Constitution*, 47, 367.

⁶³ Mary McCarthy, *Social Change and the Growth of British Power in the Gold Coast: The Fante States 1807-1874* (Lanham: University Press of America, 1983), 117; Findlay and Holdsworth, *The History of the Wesleyan Methodist Missionary Society*, iv:178.

⁶⁴ Busia, *The Position of the Chief*, 137.

communicated to them in writing. This situation frustrated chiefly authorities, most of whom were not literate at the time.

In certain parts of the country, because of the emblems and paraphernalia attached to chiefly office and other practices, some missionaries debarred traditional authorities from church membership. These chiefly elements were thought to be associated with ancestor worship, a customary belief system which was not “fully acceptable to the Christian conscience.”⁶⁵ While some Christians declined positions within the chief’s palace, others denounced the earthly authority of the chief. In some instances, however, Christian missionaries prevailed upon their members to accept chiefly positions since the social and political forms of the chief’s office were not inconsistent with the Christian faith.⁶⁶ A logical assumption can be made that such decisions to allow local converts into the chief’s court or council was not so much of the recognition of the authenticity of the custom and beliefs associated with it, rather, it was meant to give a voice to Christians and to also influence the decisions of the chiefly class especially in cases where Christians and traditional adherents had overlapping claims and interests.⁶⁷

One implication of the encounter was that by the early twentieth century, an atmosphere of hostility and antagonism developed between Christian converts and the local authorities.⁶⁸ In some states, mission stations were looted while some Christians were attacked and fled to neighbouring towns, leaving behind their properties and families.⁶⁹ Some chiefs, therefore, became hostile and unwelcoming towards Christianity. In the Ashanti area, for example, 1921 and 1942 witnessed significant conflicts between Christians and traditionalists when the former refused to comply with traditional prohibitions, such as working on farms on Thursdays. Christian converts severally expressed their displeasure with

⁶⁵ “The Church in the State: The Reply of the Presbyterian Church of the Gold Coast to a Memorandum Presented by the State Council of Akim Abuakwa” (Accra, 1942).

⁶⁶ Debrunner, *A History of Christianity in Ghana*, 196.

⁶⁷ Such was the case when the Basel Mission in Akropong encouraged their members to be part of the local chiefly court. For details see, *Report by Freeman*, CO/96/74, July 5, 1867. See also Kimble, *A Political History of Ghana*, 155.

⁶⁸ See, “Memorandum to the Presbyterian Church of the Gold Coast by the State Council of Akyem Abuakwa” (Accra, 1941).; and also “Memorandum on the Relation between Christians and the State Presented to Nana Sir Osei Prempeh II, Asantehene by Representatives of the Christian Churches in Ashanti” (Kumasi, October 16, 1942).

⁶⁹ Affrifah, “The Impact of Christianity on Akyem Society,” 81.

such customs and events. Some, however, indicated their willingness to comply with traditional practices and values so long as these practices and ideals are clearly devoid of traditional religious aspects.

The interaction between Christianity and indigenous cultures also altered the traditional lineage system. It has already been pointed out that traditional Akan society is patterned according to the centrality of the ancestors of the lineage. Traditionally, idolatry was unknown to Akan society. According to Archbishop Sarpong, the pre-encounter traditional religion was a thoroughly tolerant religion. According to him, in those days and even now, “in the same house, you realised that this is the woman’s deity; this is his husband’s deity; these are her children’s deity, but there was no problem.”⁷⁰ However, with the coming of Christianity, devotion to the ancestors was considered a form of idolatry and offensive to the Christian conscience; believers were exhorted to desist from this practice.⁷¹ As the norms and practices of the two traditions conflicted, they became a source of tension in society. The roots of some modern tensions may be traced to this historical clash.

Converts disassociated themselves from non-Christians and the customs and practices that bonded members of the kindred and the community together. During the nineteenth century, some traditional societies experienced a form of residential segregation. Native converts were stationed in separate missionary places of residence locally referred to as *oburoni-kurom* (the white man’s town).⁷² This became a source of tension between Christians and their non-Christian brethren. Christians held special funeral rites for their members and disassociated themselves from the ritual spaces of non-Christian members. Many traditional authorities complained of this as undermining the traditional concept of communalism.⁷³

With Christianisation of society came certain challenges such as those associated with the definition of marriage: whether or not it was lawful to marry more than one wife/spouse; whether or not sexual relationships outside of marriage were a sin. Mission Christianity was deeply concerned that polygamy was inconsistent and incompatible with the will of God. Full

⁷⁰ Interview with Archbishop Sarpong at his residence in Kumasi, March 24, 2016.

⁷¹ J.B. Danquah, *Ancestors, Heroes and Gods* (Kibi: George Boakie Pub. Co., 1938), 25–26.

⁷² J.B. Danquah, *The Akim Abuakwa Handbook* (London, 1928), 90; Harris W. Mobley, *The Ghanaian’s Image of the Missionary: An Analysis of the Published Critique of Christian Missionaries by Ghanaians 1897-1965* (Leiden: E. J. Brill, 1970), 73–80.

⁷³ Debrunner, *A History of Christianity in Ghana*, 318.

acceptance into Christianity involved a repudiation of polygamous relationships.⁷⁴ These contradictory forms and notions of marriage led to tensions between early Christian converts and traditional adherents. Many converts also ignored this value and continued to remain in polygamous unions. This new form of marital norms also became the basis for some converts to escape from “burdensome and unsatisfactory unions”⁷⁵ leading to divorces which hitherto would have been customarily settled. Christian norms regarding marriage and sexual relationships are still influential in the ongoing public discourse and debate on same-sex relationships.

As far as the customary law regarding the disposition of estate was concerned, Christianity, in some parts of the country, influenced traditional customary norms. For many converts, issues of inheritance, succession and property disposal no longer became a kinship or lineage affair, but individual based. In order to address the conflicts that often occurred after members died intestate, the Basel Mission Society, for instance, developed a new succession plan for the disposition of family property. The norms of the church regarding the apportionment of estates were recognised by parties as binding and enforceable. However, in some Christian communities, this rule created other legal challenges.⁷⁶ There were times when aggrieved members disagreed with the decisions of the church and preferred that such matters be settled at the civil court. In a memorandum to the Presbyterian Church, for example, King Ofori Atta of Akyem Abuakwa reminded the church that unlike in England previously, there were no ecclesiastical courts in the Gold Coast.⁷⁷

The existence of different sources of normative orders gave litigants (particularly converts) different choices of legal fora to present their cases although church laws were hardly applied. While there were no ecclesiastical courts per se, churchly leaders were active in settling cases, a situation still in vogue even in recent times especially among charismatic pentecostals. Christian influence is also extended to the role it played in the growth of democratic organisation and national consciousness. As David Kimble has noted, most of the

⁷⁴ F.L. Bartels, *The Roots of Ghana Methodism* (London: Cambridge University Press, 1965), 18.

⁷⁵ McCarthy, *Social Change and the Growth of British Power*, 113.

⁷⁶ J.B. Danquah, *Gold Coast: Akan Laws and Customs and the Akim Abuakwa Constitution* (London: George Routledge & Sons, Ltd, 1928), 185.

⁷⁷ “Memorandum to the Presbyterian Church of the Gold Coast by the State Council of Akyem Abuakwa.”

products of the missionary schools, “found their way into politics, occasionally via separatist movements of protests against the parent Church.”⁷⁸

1.4 Introduced Normative Legal and Political Systems

I have previously indicated that legal pluralism in postcolonial African nation-states and elsewhere began with the introduction of formal colonial rule. While the colonial administration recognised African customary law, in reality, the relationship between customary law and religion was neglected. African customary law was not seen as religious law. The traditions, customs, practices and the spiritual agencies that were held to legitimate customary law were either reified, condemned or ignored by the colonial administration.⁷⁹ In fact, the native society and its people were considered by early Europeans as having no religion at all. Even those who were fascinated with the religious activities of the indigenous people often doubted the credibility traditional religious beliefs. The Dutch West Indian Company merchant, William Bosman, writing in the early eighteenth century noted that in every place he visited, almost all the local people “believe in one true God, to whom they attribute the Creation of the World and all things in it, though in a crude indigested manner, they not able to form a just idea of a Deity.”⁸⁰

By the twentieth century, such conceptions and their legitimacy still remained in the minds of some celebrated colonial officials. As the oft-quoted claim of Emil Ludwig, the acting Governor of Anglo-Egyptian Sudan, has it: “How can the untutored African conceive of God?... How can this be? Deity is a philosophical concept which savages are incapable of framing.”⁸¹ And so even where ancestral law was recognised, it was subordinated to British law.⁸² But because traditionally customary law was inextricably tied to the religious values and practices, the people viewed any neglect of their customs as a neglect of their religious

⁷⁸ Kimble, *A Political History of Ghana*, 162.

⁷⁹ Elias, *The Nature of African Customary Laws*, 35.

⁸⁰ Bosman, *Description of Guinea*, 146.

⁸¹ Edwin W. Smith, “The Whole Subject in Perspective: An Introductory Survey,” in *African Ideas of God: A Symposium*, ed. Edwin W. Smith (London: Edinburgh House Press, 1950), 1.

⁸² Anthony Allott, “Religious Pluralism and the Law in England and Africa: A Case Study,” in *Religious Pluralism & Unbelief: Studies Critical and Comparative*, ed. Ian Hamnett (London and New York: Routledge, 1990), 205.

ideals.⁸³ This condition became, at various times, a major source of tensions between the colonial government, Christian missionaries and the indigenous people.⁸⁴

In this section, I look at the impact of British colonialism in terms of the legal and political impact on traditional institutions. I examine both the political and legal struggles between the colonisers and the local authorities, the reasons for the struggles and the outcome – real or latent – of these struggles. The second part of the section deals with the immediate post-independence legal and political developments. I focus largely on the legal regulation of the position of the chief under the new political dispensation.

1.4.1 Customary Beliefs and Practices under Colonialism

While Europe was keen to save Africa from eternal damnation by replacing indigenous religions with Christianity, through colonisation, it also intended to change what was considered as African “multi-cellular tissue of tribalism”⁸⁵ with a more unified political entity. By 1471, the first Europeans were present in what came to be known as the Gold Coast (now Ghana). Yet, until the latter part of the nineteenth century when the British started formal colonisation, the impact of European presence was felt in the economic, rather than other – particularly political – spheres.⁸⁶

With the commencement of colonialism, in the context of this discussion, the sovereignty and legal authority of chiefly authorities were the areas significantly affected. Following the signing of the Bond of 1844 (the Bond), which was a sort of treaty that sought to establish a formal relationship between the British government and the local chiefs, the natural rulers⁸⁷ of society recognised the authority of the British Crown.⁸⁸ Under the Bond, the Crown declared that the first objects of law were the protection of individuals and

⁸³ Makau wa Mutua, “Limitations of Religious Rights: Problematizing Religious Freedom in the African Context,” in *Religious Human Rights in Global Perspective: Legal Perspective*, ed. Johan D. van der Vyver and John Jr Witte, vol. 2, 2 vols. (The Hague: Martinus Nijhoff Publishers, 1996), 417–40., especially at 417.

⁸⁴ Rebecca Shumway, “Fante Shrine of Nananom Mpow and the Atlantic Slave Trade in Southern Ghana,” *International Journal of African Historical Studies* 44, no. 1 (2001): 27–44.

⁸⁵ Margery Perham, “The British Problem in Africa,” *Foreign Affairs* 29, no. 4 (July 1951): 637–50, especially at 638.

⁸⁶ Kimble, *A Political History of Ghana*, 1.

⁸⁷ Under the Poll Tax Ordinance of 1852, the chiefs were addressed as the natural representatives of the people.

⁸⁸ J.J. Crooks, *Records Relating to the Gold Coast Settlements from 1750 to 1874* (Dublin: Frank Cass and Co., Ltd, 1923), 296.

property. In this vein, one sees a formal transition from communalism to political and economic individualism.⁸⁹

One significant effect of the Bond was that customary practices that involved human sacrifice, human pawn, and other customs deemed by the colonisers as inconsistent with civilised standards of morality and law were outlawed.⁹⁰ Nevertheless, this document also made it a law for crimes such as murder, robbery, and kidnapping to be tried and examined before colonial judicial officers – in collaboration with the chiefs of the area. This, however, must be done in accordance with the general principles of British law.⁹¹ The problem, to be sure, was that the Bond became a document of assault on the authority of the chief in terms of his jurisdiction over certain offences within his sovereign area of control.

Under this 1844 agreement, British-appointed courts were to collaborate with, assist and guide the local chiefs. By 1851, however, the courts seldom had a chief present during proceedings.⁹² By 1865, there were complaints among even colonial officials themselves that British judges – originally meant to assist the chiefs – were exceeding their judicial limits. There were complaints of these officers administering excessive justice in the name of the Queen.⁹³ The judges capitalised on traditional authorities' ignorance of chiefly rights and pursued their (judges) own quest for power, taking all authority and jurisdictional power from

⁸⁹ For arguments in support of precolonial concept and practice of private enterprise and ownership, Gyekye has contended that while the old society practised a high form of communitarianism, it also gave room for the rights of the individual especially in matters of private property acquisition or ownership. Gyekye, *Tradition and Modernity*, 149–58; Gareth Austin, “The Emergence of Capitalist Relations in South Asante Cocoa-Farming, C. 1916–33,” *The Journal of African History* 28, no. 2 (1987): 259–79. For example, although the land was, without a doubt, a communal property, “it came to belong to the individuals through usage and the passing of time.” Kenneth D. Kaunda, “Humanism in Zambia,” in *After Mulungushi: The Economics of Zambian Humanism*, ed. Bastiaan de Gaay Fortman (Nairobi: East African Publishing House, 1969), 21, quoted in Gyekye, *Tradition and Modernity*, 150. Indeed accounts of early writers such as Mensah Sarbah, the Ghanaian lawyer and scholar also suggest that the law and constitution regarding property ownership recognised self-acquired or private property including houses, farms and even land, a property highly held as communally owned. John Mensah Sarbah, *Fanti Customary Laws: A Brief Introduction to the Principles of the Native Laws and Customs of the Fanti and Akan Districts of the Gold Coast with a Report of Some Cases Thereon Decided in the Law Courts*, Third Edition (London: Frank Cass and Co., Ltd, 1968), 60, 89.

⁹⁰ J.B. Danquah, “The Historical Significance of the Bond of 1844,” *Transactions of the Historical Society of Ghana* 3, no. 1 (1957): 3–29, especially at 4.

⁹¹ Danquah, “The Historical Significance of the Bond of 1844”; W. Walton Claridge, *A History of the Gold Coast and Ashanti: From the Earliest Times to the Commencement of the Twentieth Century*, Second Edition, vol. 1 (London: Frank Cass and Co., Ltd, 1964), 452.

⁹² McCarthy, *Social Change and the Growth of British Power*, 147.

⁹³ Parliamentary Papers, “Reports of the Select Committee (H412),” Evidence of A. Swanzy, (1865).

the chiefs. This condition led to conflicts between the colonial government and some of the local chiefs who saw the gradual shrinking of their sovereign powers.⁹⁴

The situation in what later became the Asante protectorate is worth exploring in further detail. In discussing the impact of the arrival of European political and legal systems in this area, it is imperative that we revisit the Akan notion of sovereignty. As demonstrated above, in Akan customary law, the land is the property of the ancestors and must be protected with care by every generation. The sovereignty of an Akan society is therefore not only a political one, it is also a spiritual value. People who refused to participate in interstate warfare to protect or expand the land, for example, were considered as *amanbɔfoɔ* (*aman*, states, *bɔ*, break [wreck], and *foɔ*, people/those who). It was a treasonable offence to switch allegiance from one's overlord, the trustee of the ancestors who own the land.⁹⁵ In every Akan society, the "stool" (a traditional wooden seat of government) was the emblem of the land, the people, and the state. The stool is invested with significant spiritual referents. In the Asante custom, the Golden Stool, for example, is celebrated as the "soul" of the Asante empire-state and its people. But with a reified conception of this sacred symbol of Asante sovereignty, the British Governor Frederic M. Hodgson made a costly blunder that occasioned the Asante defeating the British forces in 1900. Following the British capture and deportation of the Asante King Prempeh earlier in 1896, the Governor demanded that the Golden Stool be handed to him as "a very valuable asset" for the British Crown.⁹⁶ However, the influence of the British was largely on inhabitants of Kumasi, the administrative centre of the Asante kingdom, and not the majority of the people who were still living away from the capital town. Because these people had not accepted the new regime, they were not, as the governor put it, "'over-awed,' as they ought to be"⁹⁷ of the imperial powers, hence the rebellion against the British.

By the time the British reached the interior of Akanland, most of the coastal states had been weakened by alien political and legal interference. The Asante, however, had for long, remained resilient due to the centrality of the sacred Golden Stool, among other factors. The

⁹⁴ John Mensah Sarbah, *Fanti National Constitution: A Short Treatise on the Constitution and Government of the Fanti, Asanti, and the Other Akan Tribes of West Africa*, Second Edition (London: Frank Cass and Co. Ltd., 1968), 221.

⁹⁵ Rattray, *Ashanti Law and Constitution*, 312.

⁹⁶ Letter of 22 Feb. 1900, from Armitage to Hodgson, and his Confidential Dispatch of 7 Apr. 1900, to Chamberlin; CO/96/359.

⁹⁷ Kimble, *A Political History of Ghana*, 318.

British gradual incursion in this area had deprived chiefly actors of the power of making war and subjecting the people under customary sanctions, thus limiting the authority enjoyed by the chiefly class. It is therefore reasonable that a request for the sacred stool was understood as a demand for a total surrender of the land and the “soul” of Asante state to an alien sovereign. This condition was enough for a woman, Queen Yaa Asantewaa, to lead her people in 1900 to finally limit the British political and legal incursions in her ancestral land and its sacred customs.

Since this fierce encounter, traditional state sovereignty continued to be resilient. The failure of the colonial government to supplant chiefly authority after unsuccessful military campaigns against some of the states, among others, led to a seeming valorisation of chieftaincy and traditional laws.⁹⁸ Struggles over sovereignty between the Asante and the British forces, indeed, generated at least the three costly wars of 1874, 1896 and 1900.⁹⁹

By the time the British sphere of influence was firmly extended to the Asante protectorate, colonial officials were mindful of what their previous “ignorance and policy” regarding the area had caused them. As a result, they were careful in dealing with, according to Governor Nathan, the Asante’s “deep rooted superstition” which the British are incapable of comprehending “and from which our presence in the country has detached a proportion of the people.”¹⁰⁰ This condition, according to the governor, had made the British rule distasteful to the people. The Indirect Rule system was introduced as a means of allowing a synchronic operation of the various chiefly authorities alongside the British administration. A number of Ordinances were enacted to legitimise this move. The 1878 and 1883 Native Jurisdiction Ordinances, the 1904 Chiefs’ Ordinance, the 1922 Native Jurisdiction Bill, and the 1927 Native Administration Ordinance were all examples of significant legislations that dealt with the recognition of traditional custom and usages particularly with regard to chiefly office. Under the 1924 Native Jurisdiction Ordinance (Ashanti), for instance, local authorities were given the mandate to enact their own bylaws. They could maintain their own prisons too. Even so, these laws also became a strategic mechanism of delegitimising traditional leadership as they led to the reification or the desacralisation of the spiritual bases of traditional chiefly powers.

⁹⁸ Woodman, “How Does State Law Accommodate Diversity?,” 261.

⁹⁹ Ray, “Divided Sovereignty,” 187.

¹⁰⁰ Confidential Dispatch of 19 Mar. 1901, from Nathan to Chamberlin; CO/96/378. See also Kimble, *A Political History of Ghana*, 321–22.

Through these laws, the colonial government extended its legal control to the local customs regarding the selection and installation of chiefs. All these moves were aimed at transitioning the society into a form of political modernity. As Lucy Mair has intimated, the Indirect Rule was “the progressive adaptation of native institutions to modern conditions,”¹⁰¹ a strategy aimed at ushering the society into a form of secularity. Yet under the 1924 Native Jurisdiction Ordinance (Ashanti), for example, a royal candidate to the stool was to be formally recognised by the colonial government in order to be able to effectively function as such. Similarly, the 1935 Native Authority Ordinance (Ashanti) (Cap. 79 of the Laws of the Gold Coast) recognised that the indigenous selection and installation of traditional authorities were to be done according to local custom. At the same, under this Ordinance, the validity of the custom regarding the installation of the chief ought to be authenticated by the colonial administration before the said chiefs could exercise their powers.¹⁰² Thus, while the colonial government sought to use the Indirect Rule system to transition the indigenous society into political modernity, it also deployed the subtle use of introduced legal force to legitimise – and also compel – allegiance from the chiefs and the people of the colony. This condition, right from the beginning, prepared the ground to destroy the foundations of the dual system of governance the British had sought for.

Colonialism, directly and indirectly, undermined the traditional understanding and definition of crime and civil wrong. Traditional conception of justice and crime received its legitimisation under the conceptual categorisation of national taboos – offences that upset the natural forces – and civil wrongs or private injuries – those that affected the individual. Both cases, I have clarified, were handled by the chief and his council. But with the transplantation of introduced British law, colonial administrative and judicial officers and their assessors who had an imperfect understanding of traditional legal systems categorised these customary laws according to the patterns of British jurisprudence. Society, therefore, had to adjust its notion of crime and punishment to accommodate or fit into the British legal norms, a situation that led to legal and other ideological confusions.¹⁰³

¹⁰¹ Lucy Mair, *Native Policies in Africa* (London: Routledge, 1936), 56.

¹⁰² According to the Ordinance, a chief is “a person whose election and installation as such in accordance with native Law and Custom is recognized and confirmed by the Governor by notification in the *Gazette*, and includes the Asantehene, but does not include any person from whom the Governor for any reason which appears sufficient, withdraws such recognition by notification in the *Gazette*.”

¹⁰³ Anthony Allott, *Essays in African Law, with Special Reference to the Law of Ghana* (London: Butterworth & Co. [Publishers] Ltd, 1960), 154.

Significantly, chiefly juridical power over punishing offenders of cases of “national taboo” was taken away by the colonial government. With the promulgation of the 1883 Native Jurisdiction Ordinance, for example, chiefly juridical powers over life and death were curtailed. The only chiefly jurisdiction concerned matters of misdemeanour. Judicial powers came to rest in the colonial administration. Under the 1935 Native Courts (Ashanti) Ordinance (Cap. 80 of the Laws of Gold Coast), the hitherto authority of the chief to administer traditional law and custom existing in the area of his jurisdiction was maintained. Yet, this and other Ordinances mentioned earlier made it a condition that native courts could administer traditional law and apply customary sanctions as long as such sanctions passed the repugnancy test (i.e. the law could not be inconsistent with natural justice, equity and good conscience). Clearly there was a denial of, and also claw-back implications for, what a chief or the society holds as law and order as far as this introduced law was concerned.

The executive function of the chief was similarly limited through the interactions with European legal and political systems. The Chief Commissioner assumed the position of the paramount chief of his territory, while District Commissioners took over the role of divisional and sub-divisional chiefs. By 1944, the power of the alien government to remove chiefs had been entrenched under the 1944 Native Authority Ordinance.

Crucially, colonialism also led to the denial of the religious notions upon which the legal understanding of offences and crimes were underpinned. I have already indicated, for example, that traditionally, the concept of territorial forces has been an essential aspect of social cosmology. Each society had its own rituals aimed at remedying the catastrophic effects of spiritual sanctions in society. Colonisation, however, led to a series of changes in society that included the reification, denial or suppression of practices that the government, operating under European rationalist philosophy, was suspicious of.¹⁰⁴ Even European officers who had had direct contact with the realities of these natural forces continued to downplay the spiritual potency associated with these spirits. Narrating his living experience with these spirits, James Neal, a British colonial Chief Investigations Officer working for the government of Ghana, recounted his experience thus: “if anyone had told me then that Black Magic, or Ju-ju, would have endanger my life almost continuously, and eventually force me to choose between giving up my high-ranking position and accepting certain death, I would

¹⁰⁴ Sean Hawkins, *Writing and Colonialism in Northern Ghana: The Encounter Between the LoDagaa and “The Wold on Paper,” 1892-1991* (Toronto: University of Toronto Press Inc., 2002), 168.

have laughed outright.... And then, one day, a very strange thing happened.”¹⁰⁵ Neil eventually came to believe in the existence and influence of these territorial forces. Certain colonial laws were made to criminalise witchcraft and other beliefs thought to have emanated from ignorant superstition or neurotic experiences, but which had taken control over the daily realities of many people.¹⁰⁶

The implication of the above mentioned documents and Ordinances is that defiant and uncompromising chiefs who resisted colonial activities and policies suffered diverse forms of sanctions – including deposition and even execution – under the colonial government. Others, including traditional priests, were publicly flogged and humiliated by colonial administrators.¹⁰⁷

Notwithstanding the struggles that the chiefs had with the colonial government in maintaining their sovereign states, they were seen by the new indigenous intelligentsia as collaborators with the British imperialist regime. In this vein, the early years of the twentieth century became an era of triple struggle for the chiefs: with the colonial government, the postcolonial political and educated elites, and the masses. Between 1904 and 1924, a recorded 104 cases of destoolment cases took place in Akanlands alone,¹⁰⁸ signifying a widespread struggle between the chiefs, the colonial administration, the local elites and the people who had gradually become nominal chiefly subjects due to the combined forces of Christianity and the social change associated with colonialism.

1.4.2 Post-Independence Legal and Political Systems

By the time of the institution of the Supreme Court of Judicature for the Gold Coast colony in 1876, local African intelligentsias had already specialised in the presentation of legal cases.¹⁰⁹ Despite this, it was only the early years of the twentieth century that marked a significantly new turn in the political and legal modernisation of Ghana. This was a period when nationalism took a firm root. This period also witnessed a growing sense of awareness and

¹⁰⁵ James H. Neal, *Ju-Ju in My Life* (London: George G. Harrap & Co. Ltd, 1966), 13, 18.

¹⁰⁶ See Section 46 (e) of the Native Administration Ordinance, 1927.

¹⁰⁷ McCarthy, *Social Change and the Growth of British Power*, 117.

¹⁰⁸ Kimble, *A Political History of Ghana*, 490.

¹⁰⁹ Kimble, *A Political History of Ghana*, 68. In 1887, John Mensah Sarbah, became the first indigenous barrister in Ghana, the then Gold Coast. He was first called into bar by Lincoln’s Inn in London.

agitations among the indigenous intelligentsias. This group of elites while yearning for a more modern state grew weary of both the British colonial administration and the hitherto sacral chiefly office.

By the mid-twentieth century, colonial Ordinances had led to considerable interference in local institutions. These laws also had a crucial impact in artificially categorising the diverse ethno-cultural, linguistic, religious, and other populations as a single political entity.¹¹⁰ The transitional period of 1951 to 1957 did not lead to much change in terms of the nation-state recognition and regulation of traditional political structures and processes. On 6 March 1957, the British Crown transferred sovereignty to an independent Ghana. A key task for the new government under Kwame Nkrumah was that of maintaining national integration. Nkrumah's Convention People's Party (the CPP) government, drawing insights from the events leading to independence, anticipated the future of the nation-state if the chiefs, the natural rulers, were allowed to have a major stake. The post-independence era of Nkrumah's (1957-1966) government was therefore faced with the intractability of how to maintain the artificial system of a unified administrative entity. The period, therefore, continued the colonial redefinition of ethnic sovereignty and its chiefly legitimacy. It also saw major assaults of chiefly authorities.¹¹¹

Conscious of the legal and political implications of ethnic allegiance, Nkrumah, for instance, made it a political agenda travelling throughout the country "preaching against the evils of ethnicity."¹¹² A new law, The Avoidance of Discrimination Act, 1957 (No. 38 of 1957) came into force on 31 December 1957 outlawing all parties based on ethnic and religious affiliation.¹¹³ Successive governments discouraged decisions and activities based on ethnic affiliations in public administrations.¹¹⁴ By November 1957 the government had

¹¹⁰ For a detailed account of the evolution and problems associated with regional boundaries during this period, see Raymond Bagulo Bening, *Ghana: Regional Boundaries and National Integration* (Accra: Ghana Universities Press, 1966), from 103 ff.

¹¹¹ Richard Rathbone, *Nkrumah and the Chiefs: The Politics of Chieftaincy in Ghana 1951-60* (Athens: Ohio University Press, 2000), 99.

¹¹² Bening, *Regional Boundaries and National Integration*, 340-41.

¹¹³ Section 5 (1) of this Act states that: "No organisation established substantially for the direct or indirect benefit or advancement of the interests of any particular community or religious faith shall organise or operate for the purposes of engaging in any election." Similarly, section 6 (1) states: "No political party shall use or permit to be used any symbol or name which may be identified with any particular community or religious faith."

¹¹⁴ Woodman, "How Does State Law Accommodate Diversity?," 261.

outlawed tribalism and all tribal and ethnic organisations in the new nation-state. By 1970, the word “tribe” had become politically anachronistic and its deletion from all official records was recommended during a parliamentary debate.¹¹⁵ Yet these laws made only but a superficial impact in limiting the people’s allegiance to their natural sovereign state, its systems and actors.

Significant discontinuity persisted between the colonial and the postcolonial nation-state in connection with reverence for the land. This has become a continual source of tension for contemporary Ghana. Mazrui has aptly summarised the situation in this way: “while the precolonial African states have indulged in this land worship in relation to both agriculture and the burial of ancestors, the post-colonial state indulged in the worship of territory in relation to power and sovereignty.”¹¹⁶ The new government followed the colonial policy of disturbing the ethnic and cultural boundaries. An insuperable challenge that confronted it, however, was the traditional attachment to the land and the controversy over the creation of new administrative regions, failure of which, the government believed, threatened national integration.¹¹⁷ Just as it had in colonial era, the Minister of Justice and Local Government argued in that the creation of administrative boundaries was not to disturb “any traditional allegiance which may be cut across the new boundaries.”¹¹⁸ Yet, it can be argued that these boundaries were in fact created in order to disintegrate the power base of influential and powerful chiefs who were perceived by the government as hegemonic and a threat to the new nation-state sovereignty.

The authority of the chief in matters of land continued to be challenged. Under the CPP government, a number of laws were enacted regarding the use of land. On September 13, 1958, the Asante Stool Lands Act, 1958, came into effect making it a law for the central authority to take control over all Asante lands of which the *Asantehene* was a trustee. A similar act, the Stool Lands Act, 1959, empowered the government to take charge of Akim Abuakwa lands. All proceeds from the land, from the time of the law, were to go to a central authority under the Receiver of Stool Land revenue. By April 1959, the Brong Ahafo region was excised from the Ashanti region following series of agitations by the secessionist

¹¹⁵ Ghana, “Parliamentary Debates,” col. 882, (March 23, 1970).

¹¹⁶ Ali A. Mazrui, *The African: A Triple Heritage* (London: BBC Publications, 1986), 272.

¹¹⁷ Bening, *Regional Boundaries and National Integration*, 6.

¹¹⁸ “Parliamentary Debates,” March 20, 1959, col. 440.

movement of the Bono chiefs prior to independence.¹¹⁹ On 29 June 1960 the Regions of Ghana Act, 1960 (CA 11) came into effect, which sought to redefine the nation's boundaries. Central and Upper regions were created from Western and Northern regions respectively. The 1962 State Land Act, (Act 125) gave powers to the President to declare any specified land to be acquired in the public interest. And so, we see an aggressive governmental interference of customary law on land tenure.

There have been contested interpretations of the significance of the Stools Land legislations. There is the sense that an *ex post facto* rationalisation of government action was employed. That is, the stool legislation and other laws were an attempt to side-line the chiefs because of the existing acrimonious relationships between them and then ruling party. For example, it is believed that two of the most influential chiefs, the *Okyehene* and the *Asantehene*, had earlier supported the United Gold Coast Convention (the UGCC) party, and then subsequently the National Liberation Movement (the NLM) party. However, in Abuakwa, for example, the people had massively rallied their support for the ruling CPP government. As a sign of appreciation to the masses, and to also “punish” the chiefly class by limiting their power, the new government in 1959, instituted land acts that interfered with the customs of the area.

Just as had occurred in colonial times, some chiefs who opposed the CPP government had their sacral powers limited through legal provisions. Many chiefs were also forcefully exiled or detained.¹²⁰ On 24 September 1958, King Ofori Atta II of Akim Abuakwa, for example, was arrested, deported from his ancestral home, and forced to live in exile in Accra until 1966. On 10 November 1959, under the Preventive Detective Act of 1958, key opposition figures of the United Party (UP) in Asante including the Asantehene's chief linguist, Baffour Akoto, were arrested and detained in Accra. These and similar instances detail how the nation-state tacitly ignored the spiritual underpinnings of traditional rulers. Because traditional authorities acted as ancestral representatives, such humiliations were also understood to have offended the spiritual forces. Furthermore, these events illustrate how legal mechanisms were deployed to suppress and replace traditional state sovereignty and legitimacy. Despite the recognition and promotion of local governance as contained in the

¹¹⁹ Tordoff, “The Brong-Ahafo Region.”

¹²⁰ Rathbone, *Nkrumah and the Chiefs*, 124–25.

independence Constitution, by 1960 the new nation-state, under Article 4 of the Republican Constitution, had declared itself a “sovereign unitary Republic.”

Successive governments after Nkrumah introduced legal reforms that continued to empower the chiefs while simultaneously creating new unitary norms that undercut chiefly authority. Under the military regime of the National Liberation Council (1966-1969) a number of chiefs who had been elevated to the positions of paramountcies were deposed and those deposed by the previous government reinstalled. The Second Republic (1969-1972) saw the introduction of a framework for the management of chiefly authority. With the promulgation of the Chieftaincy Act of 1971 (Act 370), chiefly authorities and customary norms were recognised by the new state.

Following another military takeover of the 1972, the National Redemption Council government laid down “Rules for Procedure” in the operations of National House of Chiefs and the Regional Houses of Chiefs through the 1972 Chieftaincy (National and Regional Houses of Chiefs) Procedure Rules (C.I. 27). The 1972 Chieftaincy (Proceedings and Functions) (Traditional Councils) Regulations (L.I 798) also defined the jurisdiction of Traditional Councils.

Under the third republic (1979-1981), the State departed from previous policies. The 1979 Constitution renewed the State’s power to interfere in the activities of chiefs. The House of Chiefs was recognised as an autonomous entity under this Constitution, thus recognising the sovereignty of chiefly actors.¹²¹ At the same time, legal issues such as disputes over the rightful candidate to the stool could be addressed in the civil courts. When the military government of the Provisional National Defence Council (the PNDC) took over in 1981, it affirmed the 1979 provisions through the Provisional National Defence Council (Establishment) Proclamation 1982 (PNDCL 42). Yet by 1985, the state had reverted to its policy of regulating chiefly activities. The Chieftaincy (Amendment) Law, 1985 (PNDCL 107) prevented a person from being treated as a chief or from exercising any chiefly duties (as contained in the 1971 Chieftaincy Act), until due recognition had been given by the PNDC Secretary responsible for Chieftaincy Matters. The State cited chieftaincy disputes and chiefly-backed violence and conflicts as the bases for its involvement. The regime also promulgated legislation that sought to reform customary law. The Intestate Succession Law, 1985 (PNDCL 111), which sought to regulate the devolution of estate of persons who die

¹²¹ Ray, “Divided Sovereignty,” 189.

intestate, became a source of struggle between successive governments and many families. The Intestate Succession Bill which was laid before Parliament in November 2009 intended to replace the PNDCL 111 also generated much controversy in the public sphere as indicated by the proposal by a Member of Parliament for Daboya/Makarigu, Nelson Abudu Baani that idolatrous women be hanged or stoned to death.¹²²

The State has defended its involvement in customary and chiefly affairs as a result of the inability of chiefly actors to control their own affairs. Undeniably, many of the chieftaincy disputes and other clashes in the country die out only after the legal and military force of the State has been deployed. The Chieftaincy (Specified Areas) (Prohibition and Abetment of Chieftaincy Proceedings) Law, 1989 (PNDCL 212) was meant to put an end to four specific chieftaincy disputes. The struggle between old and the new states continued into the period of the Fourth Republic.

1.5 Conclusion

This chapter has shown how Christianity and colonial law in particular worked in concert to undermine customary norm and usages. It has demonstrated that since the encounter with the Christian missionaries and colonialism, several changes have occurred impacting traditional state sovereignty and its normative systems and authorities. The encounter challenged the traditional conception of the inseparability of the spiritual and the material realms. In particular, the encounter challenged traditional notion of the role of the spiritual forces who were held as an essential source of legal power and social harmony. The spiritual forces, colonial laws and the Bible became competing sources of legal power and authority. Whereas the colonial government appeared to be institutionally agnostic, the practice of secularism meant giving Christianity enormous amount of independence they required. This gave the missionaries the sole opportunity “to operate with a measure of public irresponsibility,”¹²³ a situation which worked in the British favour. The reification of ancestral practices, provocations of traditional religious rituals, among others, meant a diminution of chiefly authority which was the repository of these ancestral practices. Both missionaries and local Christian converts looked with disdain traditional sacred places, persons and objects. I have

¹²² Edwin Appiah, “Stone Adulterous Women to Death, MP Suggests,” *Myjoyonline.com*, November 14, 2014, <http://www.myjoyonline.com/news/2014/November-14th/stone-adulterous-women-to-death-ghana-mp-suggests.php>.

¹²³ John Dunn and A.F. Robertson, *Dependence and Opportunity: Political Change in Ahafo* (Cambridge and New York: Cambridge University Press, 1973), 122.

given instances of how in order to avoid recontamination, separate quarters were established for local Christian converts. I have also shown the way in which through colonial Ordinances, the colonialists undermined the spiritual basis of chiefly authority, for example.

Again, I have shown that pre-encounter normative orders and authorities operated within specific communities. They also enjoyed a degree of sovereign autonomy. The legitimacy of indigenous law was based on the sanction of the spiritual entities and these were restricted to that particular political domain. The encounter with British colonialism in particular, however, introduced a different type of sovereignty without the spiritual underpinnings that characterised the previous state. The different autonomous ethnic states were amalgamated into a presumed unified political entity. The introduction of British law aimed at unifying the diverse traditional states under colonial control became a source of struggle and tensions.

Moreover, the encounter challenged personal law of society. Christianity and colonialism led to the reorganisation of customary law and practices related to marriage, inheritance and property disposal. The introduction of Marriage Ordinance as well as churchly laws on property disposal challenged traditional society to respond to the changing realities of the time.

I have also sought to explain the processes through which post-independence legislation have continued the legacy of British legal and political interventions and management. For two reasons, I focussed largely on the office of the sacred chiefly actors to analyse the interrelations of religious, legal and political traditions of contemporary Ghana highlighting on how religion has provided the context for chiefly actors to resist what was deemed as foreign interference. First, chieftaincy is one of the few indigenous institutions which has survived and resisted what some legal scholars have called the fossilisation of both the colonial and the postcolonial legal norms.¹²⁴ Second, the institution of Ghanaian chieftaincy is the repository of customary values and ideals. As such, colonial and postcolonial legal assaults on chieftaincy have been a mechanism for bringing local custom and usages into what is deemed as acceptable standards of civilisation. This situation also served to expose the sacred traditional society to secular modernity.

The chapter offers insights into legal theory and practice in contemporary Ghana. I have established that the current nation-state is, in Paul Schiff Berman's terms, an

¹²⁴ Ekow-Daniels, "Development of Customary Law."

“increasingly overlapping norm generating” society with competing claims.¹²⁵ It derives its laws from three major sources: legislation, judicial decisions, and customary laws. A major problem facing the current legal system in terms of its development and implementation is the clash between individual and communal rights. Under the current system, civil law structures tacitly suppress cultural defence, that is, the use of culture to defend one’s actions or offence as accepted, encouraged, or normal. The State rather privileges itself as the primary bearer of law and guarantor of rights, and not merely as one of the normative actors. For example, the country’s criminal law avoids the incorporation of customary and religious norms and rather favours the criminal codes of the common law.¹²⁶ Punishment for crimes is defined by the new nation-state through its designated agents. Given that civil law structures privilege the individual while the old communal norms also endure in society, there is a concern over whether or not under the current society, the individual is visible and their identity is fully acknowledged within the community. Using these concerns as a framework, much of the discussions in subsequent chapters will focus on current events. Specific laws and their implications will be cited as the discussion progresses.

This chapter contributes to an understanding that governance in transitional states of African cannot be fully articulated and understood without considerations of the different components of legal norms. Yet previous studies have not wholly interrogated the nature of tensions that emanate from these engagements. This is partly because, as Lori Beaman has elsewhere intimated, such studies largely “gloss over the complex web of conflict and power relations that build up, destroy, and shift the boundaries of religion, religious freedom, and law.”¹²⁷ The chapter has also given a solid overview of plural legal orders in contemporary Ghana by highlighting some of the missing dimensions in scholarly discussion. While the colonial interlude is often couched as the beginning of legal pluralism, I have shown that the advent of monotheistic traditions, in particular mission Christianity brought about another form of normative order. This challenged already existing normative orders and the jurisdictional authority of sacred chiefly actors. Churchly laws and teachings altered the indigenous notions of sovereignty. The teaching on heavenly kingship and sovereignty, for example, challenge the position of chiefly actors.

¹²⁵ Berman, *Global Legal Pluralism*, 262.

¹²⁶ Woodman, “How Does State Law Accommodate Diversity?,” 267.

¹²⁷ Lori G. Beaman, *Defining Harm: Religious Freedom and the Limits of the Law* (Vancouver: The University of British Columbia Press, 2008), 33.

Moreover, I have underscored how the impact of Christian norms has been felt in the gradual shifting focus from the lineage group which, relying on ancestral norms, used to be the moral reminder of the activities and conducts of the individual. Yet, the position of contemporary churchly leaders who have continued to enjoy privileges of early Christian society has largely been ignored in the academic discourse of normative authorities. This academic neglect often gives the impression that only two forms of authority (State and chiefly) exist. Using the information provided here, in the chapter that immediately follows, I examine the three-dimensional forms of normative authorities in society, putting into context the role religion plays and the tensions that result among these authorities.

CHAPTER TWO: NORMATIVE SYSTEMS AND ACTORS IN TENSION

2.1 Introduction

Scholarly discussions on postcolonial religion-law tensions mainly focus on the beliefs, practices, and processes through which the various religious, customary and state legal norms operate. Oftentimes the various normative actors are neglected in these discussions. In the previous chapter, I demonstrated that contemporary Ghana emerged from diverse systems of ethnic, religious and cultural organisations and political institutions. I further established that the use of law to build a more unified secular political entity out of the hitherto sacred traditional states became a *modus operandi* of both the colonial and postcolonial authorities. But ongoing events indicate that the idea of constructing a unified legal and political society has been undercut by the differing religious, ethnic and customary systems and authorities.

Religious-customary systems and authorities persistently occupy a crucial place in the public domain. As a result, even though we very often speak of state authority, in reality there is a regime of plural, shared, overlapping and competing authorities in the governance space in ways akin to the Foucauldian notion of “a regime of multiple governmentalities.”¹ That is to say, in the current Ghanaian state, multiple political, religious, ethnic, legal and customary authorities continuously exert enormous normative force in the public sphere. Though a professed secular state, non-state authorities whose positions are based on religion take up many of the functions of the nation-state. This raises questions about the kind of secularism that contemporary Ghana formally subscribes to. Also, tensions ensue when the different religious and legal authorities insist on the application of their respective legal norms. The nature of these tensions begs further investigation.

In this chapter, I detail my typologies of tensions operative in contemporary Ghana, teasing out the functions religion plays in these. Because the diverse normative actors represent the various normative legal domains, their followers hold them in high esteem. As a result, it is important we understand what these actors mean to their followers. Crucially, we also need to take into consideration the way that tensions result as these actors rely on the support of their followers to engage in actions that are seen as inconsistent with the norms of other actors in society. I contend that due to the dynamic nature of religious change in Ghana,

¹ Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1975-76* (Hammondsworth: Penguin, 2008), 77. See also Nikolas Rose and Peter Miller, “Political Power beyond the State: Problematics of Government,” *The British Journal of Sociology* 43, no. 2 (June 1992): 173–205.

religion-law tensions also need to be analysed and understood as dynamic and changing. Inspired by Jean Cohen, the chapter focuses on the synchronicity of multiple legal orders, how all the diverse systems and actors operate, and ought to operate, at the same time.

I am well aware that liberal theory recognises the inevitability of the tensions and also places much emphasis on how these tensions are managed and by who. For purposes of uninterrupted discussion, however, I largely concentrate on descriptive and analytical, rather than normative, dimensions of the tensions resulting from plural legal orders in Ghana.

2.2 The Agents of Society

To be able to discuss the tensions between the various normative actors, it is important that we know who we are describing, and what it is about their office that makes them pivotal normative actors. For purposes of this thesis, I focus on three key normative actors: the State, chiefly, and churchly actors. The discussion in this section will show that there is an overlap of actual functions performed by these actors. At the same time, in terms of governance and jurisdictional authority, each of them exercises significant amount of control over their followers in the postcolonial Ghanaian nation-state.

2.2.1 Chiefly Actors

I have indicated in Chapter one the place of chieftaincy before the clash of the indigenous, Islamic, European Christian and colonial civilisations. Prior to the 1885 Berlin Conference which formally carved Africa into colonial nation-states, the societies were sacrally legitimated traditional states with diverse ethnic, religious and cultural populations. Among the Akan, the chief was the single most revered point of reference in every community or polity. He combined executive, legislative, judicial, military and significantly, religious powers. As a religious leader of his territory, the chief was “the supreme priest of all the gods in his kingdom.”² In contemporary Akan custom, the chief continues to remain a spiritual leader of his area of jurisdiction. He still sits on a stool that has formerly been used by the sacral ancestors – the founders of the traditional state.³ The spirits of the ancestors are believed to reside in this sacred stool. Because the stool is also an emblem of and synonymous with the traditional polity,⁴ the office of the chief is a sacred one, serving as a

² Meyerowitz, *The Sacred State of the Akan*, 68.

³ Rattray, *Ashanti Law and Constitution*, 83.

⁴ Article 267(1) of the Constitution also recognises the stool as synonymous with the office of the chief and the land. For the political and religious significance of the stool, see Peter Sarpong, *The Sacred Stool of the Akan* (Accra: Ghana Publishing Corporation, 1971).

mediator point between his subjects and his sacral ancestors. A chiefly actor is therefore a *prima facie* sacred representative of the ancestors. He is also “by tradition considered as the person responsible for law and order in his area.”⁵ In Akan custom, a chief’s authority and sovereign jurisdiction can barely be undermined.⁶ Challenging him means that the challenger has arrogated the power to confront the founding ancestors of the community.

To be sure, because chiefly office is held as sacred, abusing the chief is not only an *afisem* (household matter or a private affair), but rather a national (public) taboo. It even used to be a capital offence to openly insult a chiefly actor or any of his closet relatives.⁷ To ensure chiefly physical and spiritual safety, customary law demands that any lack of physical or verbal comportment in the presence of the chief be severely punished.⁸ Failure to act, it is feared, will aggrieve the ancestral forces who will pronounce their punitive sanctions on society.

Given that the chief’s office has survived fundamental assaults since the colonial encounter what is it that makes it so resilient? Despite the many mischaracterisations found in the colonial and postcolonial literature concerning the authoritarian nature of this office, there is evidence that even before the colonial encounter, chiefly sovereignty was disaggregated and fragmented. The pre-encounter chiefly position together with its associated powers was and still is governed by religious-customary instructions and legal checks and balances. Because the chief acts as a trustee of the ancestors, his powers are not absolute. A chiefly council, the highest decision making body of every town or polity has the customary power to put the chief on trial.⁹ Per customary law, a chief who persistently violates the advice of his people makes himself liable for destoolment removal from office. Although such situation rarely happened in the past, the colonial era, as noted in Chapter one, led to an increase in the number of destoolment cases and chieftaincy-based conflicts.

Despite the changes in society resulting from the factors discussed already, chiefly actors still possess considerable influence and authority in their territories of jurisdiction.

⁵ S.A. Brobbey, *The Law of Chieftaincy in Ghana: Incorporating Customary Arbitration, Contempt of Court, Judicial Review* (Accra: Advanced Legal Publications, 2008), 35.

⁶ Rattray, *Ashanti Law and Constitution*, 81.

⁷ Rattray, *Ashanti Law and Constitution*, 310.

⁸ Kwesi Yankah, *Speaking for the Chief: Òkyeame and the Politics of Akan Royal Oratory* (Indianapolis: Indiana University Press, 1995), 98–100.

⁹ Rattray, *Ashanti Law and Constitution*, 105; Busia, *The Position of the Chief*, 101.

Evidence shows that most Ghanaians still believe that their chiefs occupy important positions in matters of economic development, dispute resolution, legislative, juridical, religious, and cultural functions.¹⁰ Chiefly actors are crucial players in effective local governance in Ghana.¹¹ Recognising their importance, the Fourth Republican Constitution continues to entrench chieftaincy. The current regime has also continued the previous provisions for the establishment of Regional and National Houses of Chiefs as well as Traditional Councils. These chiefly bodies are to be autonomous. Article 106 (3) of the Constitution states that: “A bill affecting the institution of chieftaincy shall not be introduced in Parliament without prior reference to the National House of Chiefs.”

Scholars have paid much attention to the important question of the socioeconomic benefits of the land. Yet, the role of the chief in connection with these benefits in contemporary Ghana remains largely unexplored. A chief is a trustee of the ancestral land and other material resources. The title *asase wura* (*asase*, land, earth, and *wura*, owner) is a common reference to Akan and other chiefs, especially among the Gonja whose chiefly actors have the title of *wura* attached to their jurisdiction. Because land is a significant determinant of the sovereignty of a nation-state, the position of the Ghanaian chief is germane to the new state. Theoretically speaking, the State of Ghana does not own any land. The very land upon which Ghana is built on and on which every socioeconomic, legal and political activities take place is recognised as the sacred property of the chief’s ancestors. In the thriving business centres and agricultural rural areas, land is a significant source of influence, authority and struggle pointing to the prominence of the chief whose ancestors own these lands.

Some recent events also affirm why chieftaincy continues to be resilient. Chiefly actors have shown a more robust and dynamic attitude towards modern governance. Sensing that most of their hitherto developmental functions are now carried out by other actors, many chiefs have found it necessary to rely on their diasporic subjects visiting them and providing funds to cater for the infrastructural needs of their territories. Contrary to the dominant assumption that chieftaincy has lost its local and international appeal, international communities and organisations have re-found confidence in these sacral actors. For example,

¹⁰ Kwame Asamoah, “A Qualitative Study of Chieftaincy and Local Government in Ghana,” *Journal of African Studies and Development* 4, no. 3 (April 2013): 90–95.

¹¹ Asamoah, “A Qualitative Study of Chieftaincy.” See also David E. Apter, *The Gold Coast in Transition* (Princeton: Princeton University Press, 1955), 104–8.

under the “Promoting Partnerships with Traditional Authorities’ Project,” the World Bank provided a USD 5 million grant directly to two traditional authorities in Ghana – the Asanteman Council and Akyem Abuakwa Traditional Council – for the development of basic health provision. This project was aimed at improving the capacity of these influential kingly actors especially in terms of socioeconomic development in their communities.¹²

As cultural actors, chiefs are a source of ethnic and sub-ethnic solidarity. They see themselves and are seen by many Ghanaians as a repository of cultural pride in the face of the impact of cultural globalisation. Despite the expansion of state power and national consciousness, chiefs remain the rallying point for ethnic solidarity. A 2006 Centre for Indigenous Knowledge and Organisational Development (CIKOD, a local developmental-focused NGO) survey supports this observation, noting that over 80% of Ghanaians continue to rely on the chief for the functions that state actors play including the provision of security and the maintenance of law and order in society. The chief’s office, therefore, is not just a symbolic referent but also a focus of both ethnic and national solidarity.¹³ Very often, the position of the chief as the rallying point of his people serves as a source of antagonism and jealousies among some rivalrous chiefs and paramountcies.¹⁴

One significant role, less focused on in scholarly discussion, concerns the space the office of the chief creates for the nation-state to meet its international human rights obligations. The Constitution recognises Ghanaian customary ideals and cultural heritage. Article 11 (3) pays homage to customary law, defining it as “the rules of law, which by custom are applicable to particular communities in Ghana.” The Constitution also provides chiefly actors with powers to ascertain the customary law applicable to particular communities. Both the Constitution and the Chieftaincy Act, 2008 (Act 759) further provide that progressive evaluation of customary practices and usages be carried out to eliminate all forms of outdated and socially harmful customs and usages in society. The discussion has often centred on the problems the chiefly office poses to the realisation of this provision. But it is also equally pertinent to note that for the nation-state to meet its responsibility of making

¹² The World Bank, “Promoting Partnerships with Traditional Authorities Project,” Project Appraisal Document 25155-GH (Washington, DC: The World Bank, March 10, 2003).

¹³ Apter, *The Gold Coast in Transition*, 105.

¹⁴ Abamfo Ofori Atiemo, “International Human Rights, Religious Pluralism and the Future of Chieftaincy in Ghana,” *Exchange: Bulletin of Third World Christian Literature* 35, no. 4 (2006): 364.

its religious and customary norms and practices conform to international human rights laws,¹⁵ it needs the collaboration of chiefly actors.

Politically, chiefly actors play diverse roles at the local and national levels in contemporary Ghana. At the national level, they play a constitutionally mandated advisory role to the government. As cultural leaders, the Constitution provides that they advise state actors on all matters touching on the country's traditional institutions and customary law. But beyond these formal roles allotted to them, chiefly authorities are not merely intermediaries between their subjects and national authorities; they are also, as Richard Crook has rightly put it, "powerful actors in their own right."¹⁶ Unlike nation-state authorities, a *de facto* allegiance is paid to chiefly actors due to the intimate relationship and the everyday interactions that exist between them and their subjects.

The challenge, however, is that among other factors, the blurred boundaries between religious and secular roles and the private and public nature of the chiefly office have remained a significant source of confusion in society. It is even more interesting when the changing religious, ethnic and cultural demography is taken into consideration. In recent times, people rely on national authorities to access the roles that the chief previously played including provision of basic social amenities. This is largely attributed to the effects of statutory laws on chieftaincy, the gradual influence of democracy, and the increasing pressure from international human rights laws and communities, among others.

2.2.2 State Actors

Notwithstanding the strong reliance on chiefly leaders for the functions mentioned above, the formal position of nation-state authorities cannot be taken for granted. In the face of increasing modernising and globalising pressures, traditional state sovereignty and the legitimacy of its customary normative systems persistently compete with those of the postcolonial state in the governance space. The concept of sovereignty, I have demonstrated in Chapter one, was driving inspiration in the struggle for independence against imperialism. Post-independence political actors, drawing inspiration from Marxist-Leninist philosophies,¹⁷

¹⁵ An-Na'im, "State Responsibility."

¹⁶ Richard Crook, "The Role of Traditional Institutions in Political Change and Development," CDD/ODI Policy Brief No. 4 (Legon - Accra: Ghana Center for Democratic Development, November 2005), 2.

¹⁷ Mazrui, for example, has described Kwame Nkrumah as a Leninist Czar. See Ali A. Mazrui, "Nkrumah: The Leninist Czar, 1961-1976," *Transition*, The Anniversary Issue: Selections from *Transition*, 75/76 (1999): 106–26. For an analysis of Nkrumah's social and political ideologies see, Ama Biney, *The Political and Social Thought of Kwame Nkrumah* (New York: Palgrave Macmillan, 2011).

leaned towards a more Western-oriented secular state. A major effect of this commitment is that it delegitimised the sovereignty of the old traditional state. The new political elites saw chiefly actors as a hindrance to the building of a modern secular state. Full of optimism for the future of the new secular state, they campaigned against the chiefs, providing the citizenry with reasons why the chiefly actors could not be trusted in the new political dispensation. This brought friction between the chiefs and the new political actors with the chiefs accusing the national leaders of masterminding attacks on the chiefly office.¹⁸ By making the distinction between politics and religion in the new state, the new political leaders also provided the citizenry with the much-needed assurance of alleviating the social, political and economic problems that confronted the old state.

With time, the national authorities realised that people's attachment to the old traditional kinship-ties and their allegiance to chiefly actors continued. This attachment was viewed by the nationalist leaders as a major challenge to the construction of the new imagined state.¹⁹ This situation led many to employ drastic measures such as state-backed destoolment of uncompromising chiefly actors.

This notwithstanding, the new nationalist leaders soon developed a rival form of monarchical tendencies to counter what they saw as the hegemonic control of chiefly authority. That is, appropriating the spiritual and customary notions and elements of the traditional political system, they fashioned their position, according to Ali Mazrui, in four key areas: namely, the quest for aristocratic effect, the personalisation of authority, the sacralisation of authority and, the quest for a royal historical identity.²⁰ That is to say, the new nation-state actors arrogated existing chiefly elements, titles, paraphernalia and symbolisms in ways that would appeal to the loyalties of the citizenry. We get the sense, then, that in their attempt to divert allegiance from the old sacred sovereign state to the new secular state, the nation-state actors rivalled chiefly authority by adopting the traditional patron-client relationship that existed between chiefly leaders and their subjects.²¹ They, in a sense, assumed what came to be known as the position of the "big man rule" – that is, relationship

¹⁸ Rathbone, *Nkrumah and the Chiefs*, 33.

¹⁹ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, Revised Edition (London and New York: Verso Books, 2006).

²⁰ Ali A. Mazrui, "The Monarchical Tendency in Africa Political Culture," *The British Journal of Sociology* 18 (1967): 231–50.

²¹ Goran Hyden, *African Politics in Comparative Perspective* (Cambridge: Cambridge University Press, 2006).

between patrons and their clients.²² Thus, in the light of the many challenges facing the nation-state, religious and customary worldviews became the alternative means of national leaders demanding allegiance from the masses. As I detail in Chapter four in the discourse on same-sex relationships, state authorities invoke religious arguments and also rely on religious authorities to resist external pressure on the legalisation of same-sex marriage.

Despite the political and legal attempts to subordinate traditional institutions of governance, modern nation-state authorities are also greatly aware that such moves affect their interactions with the local people who still remain loyal to their sacred traditional state and its agents. The inability of national political leaders to effectively reach out to all citizenry especially in remote parts of the nation has since independence made traditional norms and modes of authority crucial. And so it is understandable that in the new secular nation-state, the presence of sacred chiefly actors has remained resilient partly due to the *natural* bond of ties between them and their subjects. This natural bond is based on “a logical corollary of the importance of and impact of traditional authorities as perceived by the people”²³ themselves. Such a situation has been a source of practical and ideological struggle between national political and chiefly actors which this chapter explores in details.

2.2.3 Churchly Actors

It is often argued that in order to be legitimate, actors who claim to be representing the identity and interest of their constituencies must assume the corresponding responsibilities of sovereignty: management of conflict, accountability and provision of the basic needs of the population.²⁴ This argument helps us think about the State of Ghana’s inadequacy when it comes to the discharge of its responsibilities as a sovereign state. It also provides a context for reflecting on the crucial importance of religious actors in taking up some of these responsibilities in contemporary Ghana. Religious actors with their international networks of relations function significantly in the democratic and national development of contemporary Ghana. Churchly actors who assume most of the failed developmental responsibilities of the

²² Hyden, *African Politics in Comparative Perspective*, 104; Paul Nugent, *Big Men, Small Boys and Politics in Ghana: Power, Ideology and the Burden of History, 1982-1994* (London and New York: Pinter Publishing Limited, 1995).

²³ Rasmus Schleef, “State Actors and Traditional Authorities in Ghana: Collaborative Provision of Peace and Security,” Policy Brief (Accra: Kofi Annan International Peacekeeping Training Centre, December 2014).

²⁴ Francis M. Deng et al., *Sovereignty as Responsibility: Conflict Management in Africa* (Washington, D.C.: The Brookings Institutions, 1996), xvi.

nation-state,²⁵ for example, have relied on their popularity and indispensability in society to create some form of social and political leverage.

It has already been indicated that churchly actors played an important role in the formation of the new nation-state. In a more religiously, legally and politically pluralistic society, the role of religious organisations continues to be vital in contemporary Ghana like most of Africa.²⁶ The last few decades, for example, have witnessed a growing shifting paradigm from kinship-based allegiance to religiously-affiliated solidarity and commitment in Ghana.²⁷ Churchly actors have, therefore, become central normative figures, to the extent that some scholars have even argued that because of the enormous spiritual influence and jurisdictional authority some pastor-prophets have over their members, they have created some forms of dependency-syndrome around themselves.²⁸ While these scholars have raised concerns that such dependency-syndrome can sometimes be enslaving, there is no doubt that members of the communities led by such religious actors trust their leaders. In fact, studies have shown that about 83% of Ghanaian pentecostals in particular believe that their leaders will help them in times of need.²⁹ Religious actors are also relevant as vehicles for trans-ethnic and transnational flows, political mobilisation, visitor social engagements, and networking.

Pertinent scholarly studies by Gerrie ter Haar and others have noted that in recent times, international institutions such as the International Monetary Fund have recognised the key role of religious organisations in development.³⁰ The impact of these religious organisations has also been appreciated within the local context. In Ghana, religious bodies are engaged in issues of education, health delivery, women's empowerment and other sectors

²⁵ Paul Gifford, *Christianity, Development and Modernity in Africa* (London: C. Hurst & Co. (Publishers) Ltd, 2015), 90–94.

²⁶ Isaac Phiri, *Proclaiming Political Pluralism: Churches and Political Transitions in Africa* (Westport: Praeger Publishers, 2001), 132.

²⁷ McCauley, "Africa's New Big Man Rule?"

²⁸ Cephas N. Omenyo, *Pentecost Outside Pentecostalism: A Study of the Development of Charismatic Renewal in the Mainline Church in Ghana* (Boekencentrum, Zoetermeer, 2002), 74. See also Abraham Akrong, "Neo-Witchcraft Mentality in Popular Christianity," *Research Review*, New Series, 6, no. 1 (2000): 1–12, especially at 4.

²⁹ McCauley, "Africa's New Big Man Rule?," 19.

³⁰ Gerrie ter Haar, "Religion and Development: Introducing a New Debate," in *Religion and Development: Ways of Transforming the World*, ed. Gerrie ter Haar (New York: Columbia University Press, 2011), 7.

of the economy.³¹ Many of the conflicts that threaten individual and national security have elsewhere been blamed on the absence of basic social needs, which religious actors are actively engaged in addressing.³² Attention has, however, not been paid to the legal importance of these religious actors in national governance. To be sure, the question of their relevance in the Ghanaian public space does not warrant a debate. The core challenge in relation to “global legal pluralism,” Ralf Michaels has noted, is whether the relevance of nonstate norms and actors require us to treat them as law.³³

Under existing Ghanaian laws, religious actors do not have the power to legislate any law of national importance. Yet they play a crucial legal role in terms of the execution of state and non-state legal norms. Certain important state policies and legislations are communicated and explained to the masses through churchly leaders. Religious actors use their platform to explain and remind their members of existing or new policies of the national government. As John Forje has noted, churchly leaders educate their members “who tend to lack awareness of law and their rights, making structures of public accountability and transparency meaningful to them.”³⁴ Of late some churchly leaders who also double as counsellors have become social media sensation due to their use of both biblical teachings and national laws to create awareness of basic rights especially in marriage and other domestic affairs.

Religious actors provide their members with the necessary normative concepts which are needed for effective social engineering and democratic development. The type of ideas that sustain religious groups are also useful for social cohesion and national unity.³⁵ Scholars

³¹ Elom Dovlo, “Religious Bodies, Subsidiarity and Development,” in *Human and Economic Development: The Importance of Civil Society and Subsidiarity*, ed. Thomas W. Scheidtweiler, vol. III (Bonn: Katholischer Akademischer Ausländer-Dienst, African Publication, 2000), 65–78; Cephas N. Omenyo, “A Comparative Analysis of the Development Intervention of Protestant and Charismatic/Pentecostal Organisations in Ghana,” *Swedish Missiological Themes* 94, no. 1 (2004): 5–22.

³² Robert D. Crutchfield and Tim Wadsworth, “Poverty and Violence,” in *International Handbook on Violence Research*, ed. Wilhelm Heitmeyer and John Hagan, vol. 1 (Dordrecht: Kluwer Academic Publishers, 2003), 67–82.

³³ Michaels, “Global Legal Pluralism.”

³⁴ John W. Forje, “Re-Imagining Faith-Based and Civil Society Organisations as Agents of Development in Transitional Politics in Africa,” in *Faith in Civil Society: Religious Actors as Drivers of Change*, ed. Heidi Moksnes and Mia Melin (Uppsala: Uppsala Centre for Sustainable Development, 2013), 173.

³⁵ Gerrie ter Haar, “Mixed Blessing: Religion in Contemporary Politics,” in *Faith in Civil Society: Religious Actors as Drivers of Change*, ed. Heidi Moksnes and Mia Melin (Uppsala: Uppsala Centre for Sustainable Development, 2013), 31–43; Stephen Ellis and Gerrie ter Haar, “Religion and Politics in Sub-Saharan Africa,” *The Journal of Modern African Studies* 36, no. 2 (June 1998): 175–201.

such as Paul Gifford have been critical of this claim demanding to know how religious worldviews have transformed society, and if so, what might count as proof or how one might assess this.³⁶ Gifford's seeming scepticism need not be taken to be a denial of the valence of religion in Ghanaian public space, but instead his call for empirical evidence must be seen as a challenge not to essentialize the role of religion in Ghanaian political processes.

Nevertheless, we cannot belittle the claim that religious actors perform certain normative legal functions especially as key peacemakers of society. In a society where access to basic justice in the usual civil law channels is imperfect, churchly leaders perform vital roles especially in alternative dispute resolution. Many people have relied on their religious leaders to settle disputes that would have otherwise been delayed or frustrated in civil courts. Not only that, religious leaders have also stepped in on legal issues of national import, urging the parties involved to place national interest at heart particularly during electioneering periods. They persistently appeal to their followers to rely on prayer, preaching for peace, unity and serenity to reign.³⁷ They have often proposed for how state leaders should go by their duties especially in matters of civil liberties, inequalities, social justice, religious freedom, etc., which are informed by churchly teachings. Their support and opposition to certain crucial decisions of the state have led to important revisions in national legislations.³⁸ Ironically, some of the normative ordering and ritual processes have created concerns for human rights and legal enforcement which I seek to detail in Chapter three. Having defined law in terms of enforced behaviour, in a society where evidence shows that 83% of Ghanaian pentecostals trust their leaders, one cannot take these actors for granted in discussions such as this. Allotting them important public space, therefore, becomes crucial for understanding the religion-law tensions examined below.

The above helps us reflect on the concern that despite the positive roles and influences of churchly actors, what happens when their law collide with state-law system or when they invoke their increasing numerical strength and influence to insist on the application of their law in the public space? The information provided here serves as a framework to demonstrate how the position of churchly actors in the public sphere also has other legal and political consequences. As will be seen, churchly actors have on occasion clashed with state and

³⁶ Gifford, *Ghana's New Christianity*.

³⁷ Forje, "Re-Imagining Faith-Based and Civil Society Organisations," 172.

³⁸ Dovlo, "Religion in the Public Sphere"; E.K. Quashigah, "Legislating Religious Liberty: The Ghanaian Experience," *BYU Law Review* 1999, no. 2/6 (1999): 589–607.

traditional actors. Owing to their spiritual capital in public space, they have also waded into vital national security issues which political actors have questioned their competence and insights into,³⁹ a situation leading to diverse types of tensions in contemporary Ghana.

2.3 Typologies of Tensions

Tensions occur when each of the normative actors discussed above insist on the application of their formal and informal norms in society. Besides, overlapping constitutional freedoms and mandates also serve as a source of tension. In other words, because these actors represent the various normative domains, understanding what they mean to their followers and how they rely on the support of their followers helps us make sense of the tensions in society. A discussion of religion-law tensions in contemporary Ghana, in this sense, must take account of these three normative agents. In the discussion that follows, I set out to develop a typology of the dynamic nature of these tensions. This typology is of particular relevance to a study of the significance of legal pluralism which according to Cohen is its synchronicity, that is, the simultaneous coexistence and operation of diverse orders.⁴⁰ Furthermore, making these delineations strengthens the chapter's contribution to an understanding of the different contexts within which each of the three agents continue to compete for space and influence. I contend here that in the analysis of tensions in society, what seems contradictory and ambivalent about the religion-law tensions makes sense when we understand the differing normative systems and diversity of actors.

My use of tension which I have defined to include legal contestations, political action and reaction, oppositional discourse conforms to that of the French sociologist Alain Touraine, who focuses on how society shapes itself through struggles. His concept of conflict is relevant to the following analysis. According to Touraine, conflict entails a logical definition of opponents or competing actors and of the wealth or resources they are fighting for or negotiating to control.⁴¹ Touraine identifies the competitive pursuit of collective interests as primary and readily identified category of social conflict. This occurs due to

³⁹ William Yaw Owusu, "Al-Qaeda Decision Dangerous – Catholic Bishops Tell Mahama," *Daily Guide*, January 13, 2016; "Review Asylum to Guantanamo Prisoners: Three Christian Groups," *Daily Graphic*, January 11, 2016. But see also "Catholic Bishops Leave Their Common Sense When They See and Hear Anything to Do with Prez Mahama," [peacefmonline.com](http://m.peacefmonline.com/pages/politics/politics/201601/266579.php), (January 14, 2016), <http://m.peacefmonline.com/pages/politics/politics/201601/266579.php>.

⁴⁰ Cohen, *Globalization and Sovereignty*, 33, 41.

⁴¹ Alain Touraine, "An Introduction to the Study of Social Movements," *Social Research* 52, no. 4 (Winter 1985): 749–87, especially at 750-751.

actors struggling to take control over or maximise advantage on the public sphere. As the diverse cases will confirm in the end, the three actors I focus on are both competitors and allies.

Whereas religion-law tensions exist on multi-levels, it is significant that I focus on and analyse three identifiable forms only. This threefold classification is expressive of religion-law tensions that regularly occur in contemporary Ghanaian society. The first tension I examine is what I metaphorically refer to as tensions between the sacred stool and the Bible. This tension entails situations where traditional authorities whose symbol of authority is the sacred stool and churchly actors whose authority is based on the Bible clash, with the State behind neither. This type of tension results from communal self-determination. As I demonstrate, with the changing religious, cultural and ethnic demography, traditional authorities define their values as threatened by invasion of non-traditional religious norms. Their emotive response to such situations often creates tensions in society.

The second tension I discuss is tensions between the Constitution and the sacred stool. This tension is concerned with situations where nation-state and traditional authorities clash often, but not always, tacitly supported by churches. Here I am most interested in investigating the extent to which tensions occur when traditional authorities view state actors, who rely on constitutional law as well as other civil law structures, as invaders of traditional sovereignty. I show how national authorities' emphasis on high individuality and legal universalism in the new secular state often clashes with the old communitarian ideals of society.

The final tension I discuss is where sacred and secular actors clash. In a functional plural legal order, state actors ought to be part of the normative competitors in the public sphere. Here I examine the depth to which tensions occur when secular state leaders depart from this fundamental principle of legal pluralism and rather project the imposed state supremacy over the actual religious and customary realities of authority.

The uniqueness of the analysis of these types of tensions is that it gives central importance to the function religion-based actors perform in the complex day-to-day social, cultural, political and legal life in contemporary Ghana. As to the types of cases I focus on, they bring newer dimensions to the often neglected aspects of religion-law tensions.

2.3.1 The Sacred Stool versus the Bible

Despite the decoupling of state and religion in contemporary Ghana, some challenges continue to occur in terms of the practicality of this separation when the position of the chief

is invoked. How and under what conditions, for example, does the office of the chief become a public institution and when is it a private affair? In terms of the neutrality of the traditional state which was hitherto religiously monochrome, how does the chief, the spiritual leader of his territory, remain neutral or suspend any preconceived judgements in a society that has now become religiously plural? These concerns often lead to conflicts and struggles particularly when religious groups collide in their engagements in daily religious, legal and political domains. This sub-sections draws out the different kinds of tensions that occur in the name of the sacred realms of the stool and the Bible, that is, chiefly versus churchly space, assessing the different modes of recourse that apply. I look at the degree to which the office of these two actors yield to tensions in society especially in relation to religious freedom. We will see that the sacred stool in contemporary Ghana has regularly challenged secular ideals, the separation between the public and the private domains, the sacred and the profane. I discuss these tensions in terms of changing socio-religious demography, the paradigm shift in traditional conceptions of law and authority, the modes of proselytization, and finally, the churchly desire to modernise society and its values.

In discussing how *changing religious demography* leads to tensions, scholars of religious diversity have noted that conflicts often emerge when dominant religious groups begin to lose the sway they hold in society.⁴² In contemporary Ghana, changing socio-religious realities have led to the reorganisation of the traditional religious landscape and its political institutions and processes, a condition which often becomes a driving force for tensions. I have already established that there have been rival forms of religious, juridical and political authority of the chief all of which challenge the values previously placed on the sacred stool. In Ghana, statistical data shows that there has been a gradual decline of traditional religious adherents over the last two census periods (from 8.5% in 2000 to 5.2% in 2010). At the same time, there has been a corresponding growth of the followers of the Bible particularly of pentecostal Christianity during this same period (from 24.1% in 2000 to 28.3% in 2010). Moslems constitute 17.1% of the population. Besides, there is a felt presence of Eastern religious traditions with a number of them being part of the Hindu community.⁴³ There is also a small community of Jews, Bahai, among others. The last census data indicate

⁴² Gary D. Bouma and Andrew Singleton, "A Comparative Study of the Successful Management of Religious Diversity: Melbourne and Hong Kong," *International Sociology* 9, no. 1 (2004): 1–24.

⁴³ Albert Kafui Wuaku, *Hindu Gods in West Africa: Ghanaian Devotees of Shiva and Krishna* (Leiden and Boston: BRILL, 2013).

a reduction in the number of people who affiliate with no religion from 6.1% in 2000 to 5.3% in 2010.

One significant impact of this demographic change is that many chiefly actors who are traditionally religious leaders of their territory have come followers of the Bible and occupy important leadership positions in their newfound religion. Most of my chiefly informants were Christians while one was a Muslim. There are even Christian Chiefs and Queen mothers' Association in many traditional areas in Ghana and in the Techiman Traditional Area, one of my chiefly informants presides over just such an association. Some of these chiefs and queen mothers⁴⁴ are actively involved in the spread of the teachings of the Bible. A chiefly informant, a prominent divisional chief of the traditional area, for example, preaches at a local information centre in this town, signifying the extent to which Christianity has penetrated into the traditional political institutions. It is now a commonplace to hear non-Christian chiefly actors citing biblical passages when expressing their views on issues such as same-sex partnerships, abortion, chieftaincy and morality.

Tensions associated with the above changing demography are enormous. First, because contemporary Ghana is no longer religiously monochrome, the application of traditional norms that are seen as inconsistent with the teachings of the Bible often create tensions between the two competing traditions of traditional religion and Christianity. Bible believing chiefs, for example, are confronted with the difficulty of how to balance their traditional authority with their Christian faith. This is more so when they are faced with cases of overlapping normative orders of the two traditions. Some chiefly informants indicated that they are regularly confronted with the difficulty of determining whose rights prevail in times of competing and overlapping claims. For example, in a conversation with a divisional chief,⁴⁵ he informed me of a case before him at the time of my interview, how a young Christian man was accused of denigrating the authority of one of the sub-divisional chiefs under him (my chiefly informant). The young man was accused of, inter alia, undermining the sub-divisional chief's sacral position during a confrontation between the two. Openly challenging the authority of a chief is traditionally an offence against the stool upon which the spirits of the sacral ancestors are understood to reside.⁴⁶ The problem, however, was that

⁴⁴ Article 277 of the Constitution defines a "chief" to include "queen mothers" as "a person, who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage."

⁴⁵ Interview at a town in the Techiman Traditional Area, 4 March 2015.

⁴⁶ Rattray, *Ashanti Law and Constitution*, 310.

the young man also refused to undergo the customary sanctions associated with this offence invoking his Christian faith as a cultural defence. When the case was brought to my chiefly informant, a higher authority in the division, he realised that both parties had defensible positions in the core subject of dispute especially when the overlapping constitutional and customary legal norms were invoked. To the higher chief, however, the young Christian's open repudiation of the authority of his sub-divisional chief was against custom. By extension, this action also violates Section 63(c) of the Chieftaincy Act which makes it an offence for a person to knowingly use disrespectful or insulting language or insult a chief by word or conduct. Although my chiefly informant admitted that his sub-divisional chief also erred to some extent, the real challenge facing him (my informant) was whether or not to condemn the chiefly actor openly. Doing so is not only traditionally imprudent but also potentially sets a future precedent for other subjects to challenge chiefly authority. Issues of this nature have, in the postcolonial milieu, have also been raised in both the civil and the traditional courts.⁴⁷

The second challenge is that in the face of changing religious demography, tensions between traditional and churchly leaders occur over the kind of religious moral conduct that should guide the daily activities of the people. The jurisdictional authority of the stool, as noted already, is territorially specific while the authority and values of the Bible transcends traditional boundaries. The new religious social networks presided over by the Christian "big men," as noted also above, cut across interethnic relationships and other ties.⁴⁸ While both the sacred stool and the Bible possess a somewhat similar spiritual capital, actors of the latter have in recent times become new moral and spiritual agencies. Their authority transcends, according to Gifford, "many of the preoccupations, concerns and orientations of the traditional believer transposed into modern setting."⁴⁹ I have indicated that because of their spiritual and social influence and authority, some pastor-prophets have created a form of dependency-syndrome which invariably challenges traditional society and its authority. The diverse nature of contemporary Ghanaian religious demography means that the stool is no longer the sole rallying point in society. Chiefly actors, too, are no longer the sole interpretative voice of spiritual occurrences in society. Alternative interpretations and

⁴⁷ G.K. Acquah, "Customary Offences and the Courts," *Review of Ghana Law* 18 (1991-1992): 36-67.

⁴⁸ McCauley, "Africa's New Big Man Rule?"

⁴⁹ Gifford, *Ghana's New Christianity*, 108.

mediations are sought from non-traditional religious spheres. But because chiefly actors still want to maintain their influence in society, they often come into conflict with churchly leaders.

The third issue which is closely related to the “problem” of changing religious demography is that the blurred and contested boundaries between the religious and the secular nature of the traditional landscape is largely blamed in many tensions and struggles. Since per custom a chief is a custodian of ancestral stool and norms and the land on which the State itself is built on, traditionalists fear that any uncritical altering of these customs will spiritually lead to the chief incurring the wrath of his ancestors. But because the traditional space is no longer religiously homogenous and since some of the customary norms and practices are also inconsistent with certain key teachings of the Bible, chiefly and non-traditional religious actors particularly churchly actors have clashed on occasions especially on suspicions that the latter want to Christianise the chieftaincy institution and other traditional ritual space.⁵⁰ A chiefly actor, for example, noted that while they want to live in harmony with other traditions, they will, at the same time, protect their custom from being denigrated. According to him, Christians in particular must understand that without the deities and the customs they preach against, the town could not have been founded and grown as far as it has. If they want to live in harmony with the traditionalists, he argues, then they must learn how to respect these customs.

Tensions between traditional and churchly leaders likewise occur as a result of *shifting paradigms of traditional conceptions of law and authority*. There is an ongoing cultural shift from rational to experiential modes of authority. That is, there is a significantly gradual movement away from the previous sacred communal mode of authority to an intensely sacred but privatised form.⁵¹ As society goes through religious transition, the chief, I emphasise, is no longer the sole possessor of spiritual and social capital needed in the daily routines of his subjects, who have increasingly become nominal. The spiritual and legal norms underpinning the chiefly office are also no longer communally shared or strictly adhered to by all subjects albeit these are also constitutionally entrenched.⁵² Most Christians,

⁵⁰ Atiemo, “Fighting for the Rights of the Gods.”

⁵¹ Gary Bouma, *Australian Soul: Religion and Spirituality in the Twenty-First Century* (Cambridge: Cambridge University Press, 2006), 96.

⁵² Richard Rathbone, “From Kingdom to Nation: Changing African Constructions of Identity,” in *Chieftaincy and Development in Ghana: Culture, Governance and Development*, ed. Irene K. Odotei and Albert K. Awedoba (Legon: Sub-Saharan Publishers, 2006), 43–54.

I have said earlier, now put more trust in their churchly leaders than the chief. Archbishop Sarpong, known for his proposal for the inculturation of Christian and traditional values notes that in Ghana, “The People of the Book” are the most dangerous religious people. Christians insistence on “this is in the Bible; this is not in the Bible,” he argues, is the cause of many of the tensions.⁵³ For some time, this and other modernising factors such as education, democratisation, globalisation and the universalisation of human rights have, in combination, limited the authority of the chief. All my chiefly informants admitted that they have indeed witnessed a diminution of their authority and power. Understood thus, it is entirely reasonable to see why many subjects are able to openly challenge the jurisdictional authority of the chief as was the case involving the sub-divisional chief and the young man just cited.

Needless to say, in terms of shifting conceptions of law and authority, tensions further occur especially when churchly actors who have become alternative moral leaders raise objections over some chiefly sanctions meted out on offenders of customary law. As the previous case shows, some of the old customary punishments are inconsistent with Christianity and other religious faiths. For example, some sanctions to pacify the traditional deities require a sacrifice of a ram or even a cow depending on the seriousness of the offence. Some Christians interpret this sanction as blood-sacrifice which, for them, is against their biblical teachings. This situation generates tension between them and traditional authorities. While the chief is still the traditional spiritual leader of his territory, this spiritual and, to a larger extent, juridical authority is now shared by non-traditional religious actors.

Due to the changing conception of law and authority, piacular sacrifices aimed at averting misfortunes and failures of the land are no longer viewed as the only means of manipulating nature. Non-traditional religious adherents have introduced an alternative view, believing that even if social problems are caused by spiritual forces, prayer alone can address them.⁵⁴ This leads them to resist some of the rituals aimed at addressing social problems, a situation that brings about conflict. A key example of this is taken from an episode which occurred in the late 1990s in Sunyani Traditional Area. During this period, the community was bewildered with what was thought to be a mysterious beast roaming in town and mauling animals in the night. The traditional authorities therefore decided to collect a levy to make an

⁵³ Interview on March 24, 2015.

⁵⁴ Elsewhere Islamic prayer and ritual practices have been faulted as spoiling everything since the encounter between Islam and the indigenous society. Adeline Masquelier, *Prayer Has Spoiled Everything: Possession, Power and Identity in an Islamic Town of Niger* (Durham and London: Duke University Press, 2001).

atonement sacrifice to the local river deity.⁵⁵ As the society opens itself up to democracy, modernisation and urbanisation, the peace which the river deities formerly enjoyed was understood to be threatened by these social changes. In this respect, the traditional authorities feared that the deities might have been aggrieved by the deeds of the people hence the need for communal contribution to allow the sacrifice to be performed. This decision was, however, resisted by some Christian groups who argued that the misfortune could only be averted through (Christian) prayers. Paying such levies would, hence, go against their faith.

During my research at Tanoboase, a town in the Techiman north district, a similar incident was narrated to me. In December 2014, an imminent *musuo* (misfortune), was revealed to the chief priest of the town. Because of this, every household was to contribute an egg or “egg money” (its monetary equivalent) for the collective piacular sacrifice to be made, failure of which would result in the community suffering intense adversities. According to two of my informants at the Taa Kora shrine (the Tano shrine of Tanoboase),⁵⁶ some actors of the Seventh-day Adventist Church rejected this “illegitimate” spiritual demand.⁵⁷ About two months later, two of the elders of the church were knocked down and killed by a speeding vehicle, which was interpreted by the traditionalists as the result of the church’s refusal to be part of the general contribution. It was thus viewed as a victory for the deities.

To the traditionalists, and indeed some of my Christian and non-Christian informants, this “mysterious” death was an indication of the unhappiness of the spiritual agencies over the way in which the church responded to the gods’ demands. This suggests that despite the modernising nature of society, belief in the wrath of the spiritual intermediaries of society can, under certain situations, have influence on majority of the people, both Christians and non-Christians alike. The point of disagreement lies in the mode of approaching the problem that these forces cause. An elder of the church, however, discounted any correlation between their noncompliance and the untimely death. He and some others interpreted the death as only

⁵⁵ The *Kontihene* (second in command of a traditional state) of the town explained to me that because the town does not have an *oman komfo*, state chief priest, the exact cause of this problem was unknown to the authorities. As such, they had to employ spiritual assistance from elsewhere which involves acquiring a donkey which was used to roam through the town to neutralise the powers of the alleged mysterious beast. Telephone conversation, May 5, 2016.

⁵⁶ Interview with A.T. and K.M. at Taa Kese shrine at Tanoboase, March 4 and 8, 2015. For a detailed understanding of the different categories of Tano shrines and their functions, see Dennis, “Bono Shrine Art.” See also, Meyerowitz, *The Sacred State of the Akan*, 122–41.; Rattray, *Ashanti*, 188–94.

⁵⁷ An elder of the church collaborated this story admitting that a public announcement was made in church concerning the non-payment of the said contribution as it goes against the church’s teaching. Interview conducted at Tanoboase, March 22, 2015.

chance happening, a negative coincidence. For these Christians, the traditional authorities could not also explain other vehicular accidents in the town⁵⁸ before and after this particular case. An informant at the shrine defended the correlation thus: “Every calamity wants a reason. Have you ever seen a deity holding a knife coming to kill someone? ...They will quietly push you to go and cross a speeding vehicle. That is what exactly happened to them [the deceased church elders].”⁵⁹ But for the church, this linkage is a mere ploy by the chief priest and his agents to put fear in people so as to demand future allegiance an attempt an elder of the church said they will always resist. Here we see a contest over communal self-determination between the traditionalists and Christians.

Archbishop Sarpong, referred to above, has argued for that some of the chiefly versus churchly actors tensions result from a combination of arrogance and ignorance on the part of these two parties and their followers. He avers that Christians refusal to participate in traditional festivals or comply with some of the customary prohibitions are often a function of limited knowledge about what those customs or festivals stand for. Traditionally, he said, the spiritual components of a festival are not opened to the public but are done in camera by the traditional authorities or the religious ritual specialists involved. What is displayed to the public are merely the social and cultural components which he believes does not violate the Christian conscience. Despite this, he maintains, if the chiefs believe that non-compliance with customary norms or practices offend the spiritual forces, then they should allow these forces to sanction offenders (Christians). These views are subject to interrogation from both traditionalists and churchly actors including whether or not all churches have the same biblical explanation of what constitutes idolatry. Besides, there is still the controversy of whether or not chiefly actors who are held as ancestral representatives can punish on behalf of the ancestors. Whatever the correct position is, both traditions have invoked their religious beliefs and constitutional rights to both demand and resist certain overlapping claims, further creating legal and human rights tensions.

⁵⁸ Indeed, the town which lies on a major busy international road linking Ghana and the norther countries of Burkina Faso, Niger and Libya, is noted for occasional pedestrian knockdown accidents. For example, on the day of my interview with one of the elders, in the course of the interview, we had to pause as we witnessed a near accident involving a three-year-old boy who was nearly knocked down by two speeding cars. On February 15, 2016 following the seventh death of pedestrian knockdowns within a year, angry youth of the town defied state law and police interventions by constructing speed ramps on the road. See Danjima Yaro, “Tanoboase Residents on Rampage over the Increasing Rate off Pedestrian Knock Downs in Town,” *Banewsgh.com*, (February 16, 2016), <http://banewsgh.com/tanoboase-residents-on-rampage/13970>.

⁵⁹ Interview with Elder Dan, Tanoboase March 8, 2015.

Another factor that very often lead to tensions between chiefly and churchly actors is *the issue of proselytization*. Article 12 (2) of the Constitution guarantees freedom of religion and other rights as fundamental to every Ghanaian. Section 296 (12) of the Criminal Code makes it an offence punishable by the civil courts to disturb or molest any minister of religion while celebrating any religious rite or office in any public place, or any person assisting or attending at the celebration of such rite or office. Clearly, we see that proselytization is guaranteed and protected by state law. The hindrance to this religious freedom, ironically, often comes from religious groups themselves, who the law seeks to protect. In enjoying these fundamental rights, adherents of both traditional and Christian faiths have often demonstrated uncompromising and intolerant attitudes towards each other. Tensions generally occur over the nature of continuity and disjuncture that must occur in the postcolonial society. For example, traditionalists have accused Christians of provoking them when Christians preach that the traditional religious field and ritual space and elements are abodes of the devil and pathways to failure and misfortune in life. In most pentecostal narratives, true believers are cautioned to sever ties with the old ideals and embrace Christian values which are also held as being in consonance with modern visions.⁶⁰ But because traditionalists see themselves as representing a continuance of past glories in society, such discourse often attracts their displeasure.

The above situation is reflected in the information garnered from my field-site area of Techiman, for example, where one such clash is recorded between an evangelist and the traditional authorities of the area. The evangelist who is also a member of the ruling family of this area has on occasion come into conflict with the chiefly authorities. He has on different occasions been accused of denigrating the spiritual bases of customary systems arguing that the supernatural entities of society are not the source of these systems. Instead, he argues, these customary norms emanated from the chiefly agents themselves. As such, he claims, the chiefs must desacralize customary norms in order to appeal to non-traditionalists. Owing to their revered position, he contends, “if Nana [a chief] passes a law, it will be difficult for you not to abide by it. But if it becomes fetish [sic] and I don’t worship any fetish [sic] then it will become difficult for me to follow the laws of a fetish [sic]; as for that, it won’t happen.”⁶¹

⁶⁰ Birgit Meyer, “‘Make a Complete Break With the Past’: Memory and Post-Colonial Modernity in Ghanaian Pentecostalist Discourse,” *Journal of Religion in Africa* 28, no. 3 (August 1998): 316–48; Ruth Marshall, “Power in the Name of Jesus,” *Review of African Political Economy*, Fundamentalism in Africa: Religion and Politics, no. 52 (November 1992): 21–37.

⁶¹ Interview Nana Besseah, December 16, 2014.

Here we also see how in competing for religious space, the sanctioned force of the deities in customary normative systems has come under intense scrutiny in the proselytising activities of churchly leaders.

On one such occasion, after the evangelist preached against the celebration of the traditional annual *Apoɔ* (pronounced “apour”) festival of the area, the traditional authorities were alleged to have instigated the burning down of the evangelist’s church building. The traditional authorities and local FM stations banned him from proselytising his faith in the traditional area.⁶² The evangelist, in an interview, indicated that the state represented by the Commission for Human Rights and Administrative Justice (the CHRAJ) addressed the issue by reversing the sanction of banishment imposed by the traditional authorities. He indicated that the CHRAJ also cautioned him to refrain from provoking the traditionalists through his proselytising activities. These conditions were accepted by both parties. In this sense, we see the nation-state serving as a mediator between competing claims of the single individual and the religious cultural community (to be discussed in detail later in the chapter).

In the proselytising activities of charismatic pentecostalism in particular, customary norms and beliefs such as the sacrality of the land are sometimes questioned, a situation which lends itself to tensions since such activities become a major source of worry to traditional authorities. Violent confrontations, destruction of property and violations of constitutional and other rights often ensued from this. At Techiman, some chiefly informants narrated the story of a young evangelist whose proselytizing activities were viewed by the traditional authorities as a denigration of the local *amanfo kwaeɛ* (the grove of the ancestors).⁶³ *Amanfo* forest, in Takyiman Bono history and religion, is a sacred site. It is celebrated as the burial site of the founding ancestors of the present day Techiman Traditional Area. To the traditional authorities and their followers, the grove is both a burial site for the founding ancestors and also the last resting place of one of their sacred primal kings on his return from exile. As Mazrui has said, throughout Africa, the mystique associated with reverence for the land, “is partly a compact between the living, the dead and the unborn. Where the ancestors are buried, there the soul of the clan resides, and there the prospects of the health of the next generation should be sought.”⁶⁴ Accordingly, in Takyiman Bono

⁶² For details see, Seth Tweneboah, “Religious Human Rights in the Techiman Bono of Modern Ghana” (unpublished: MPhil Thesis, University of Ghana, 2010), 106–7.

⁶³ Interview with Nana Abubakar Akumfi Ameyaw, Hansua palace on March 22, 2015; Eric Bawa, Techiman, March 23, 2016.

⁶⁴ Mazrui, *The African*, 271.

cosmology the significance of the grove cannot be belittled. This grove is held as a state sacred shrine that spiritually situates the people in time and space. But in recent times, conflict has ensued between traditional authorities and churchly actors over the spiritual significance of this sacred site. The evangelist, for example, was accused of preaching against the fencing (protection) of the sacred grove arguing that the society has been modernising to a point where it needs building materials for schools, hospitals and other modernising projects instead of “protecting” the dead ancestors. The traditional authorities took offence at this preaching, interpreting it, as one queen mother puts it, as an *akutia* (innuendo) and a direct *atendidie* (impertinence) to the revered ancestors.⁶⁵ Following the dispute that ensued from this, the evangelist was banned from the area.

With respect to the final source of tensions I discuss in this chapter, *the modernisation of traditional religion* and its ritual space, it is observable that agents of the two traditions continue to disagree on the kind of continuity in society; they particularly disagree on certain modifications to some customary ceremonial rituals. Churchly actors are seen as posing a threat to the old cultural and familial values. While they appreciate some traditional customary rituals such as rites of passage, they have disagreed on the kind of modifications and alterations to these rituals. In some churches, actors have replaced traditional ritual elements associated with marriage and child-naming ceremonies (Christening), for example, with modernising (Christian) forms. In pentecostal discourse, for instance, alcohol, a traditionally sacred ritual fluid represents ancestral past, immorality and pathways to demonic influences which true believers must shun away from.⁶⁶ As such, it is now replaced with soft drinks. These forms of modifications while welcomed by some have been a source of tension.

As custodians of customary norms, some chiefs have raised the moral panic that the infiltration of certain Christian values and norms are to blame for the moral breakdown in society. An informant narrated how on one occasion, during a child-naming ceremony, the officiating family head refused to replace the soft drink with the conventional alcohol, a situation that brought the ceremony to a standstill. Following the family head’s refusal, charismatic Christian members of the two families who view traditional alcohol as representing an ancestral past confronted the other members over the need to replace it with

⁶⁵ Interview with Nana Adwoa M at Techiman on December 14, 2014.

⁶⁶ Rijk van Dijk, “Modernity’s Limit: Pentecostalism and the Moral Rejection of Alcohol in Malawi,” in *Alcohol in Africa: Mixing Business, Pleasure and Politics*, ed. Deborah Fahy Bryceson (Portsmouth: Heinemann, 2002), 256.

imported soft drink. By way of explanation, in traditional Akan ritual space, water and liquor are considered as what Emmanuel Akyeampong has rightly termed as spiritual fluids used in libation, naming and other ceremonial rituals.⁶⁷ During child-naming ceremonies, these sacred fluids are separately dipped three times onto the child's tongue. These two distinct referents, according to Kwesi Yankah, are "employed in the ritual to symbolize contrastive social paradigms with the child's potential sphere of experience."⁶⁸ The ritual, in a sense, is meant to instil the communitarian essence of honesty, truth, firmness and boldness into the child. While replacing alcohol with soft drink is not a significant pentecostal theology, in recent times, it has created some challenges in society. For traditionalists, one profound impact of Christianity has been, to use Akyeampong's words, "the misuse of this spiritual fluid" which has led to a form of "spiritual ailment."⁶⁹ That is, for traditionalists, the neglect of traditional customs accounts for many social problems. To the officiating family head, using imported soft drink to represent alcohol and entreating the christened child to view it as such is the reason why children grow up to become dishonest, insincere and corrupt. The traditionalists' argument here is that society makes a mockery of its own values once the ritual elements are replaced in the name of modification engineered by introduced belief systems.

The implication of the different kinds of tensions I have outlined in this section is that they collectively lead to fragmentation of religious authority. Scholars have observed that changing religious, ethnic and cultural spaces create "new and unprecedented demographic multicultural, multi-ethnic and multi-religious realities."⁷⁰ In contemporary Ghana, part of these "multi-religious realities" involves compromising traditional state sovereignty and communal self-determination. In some traditional jurisdictions, chiefly actors have been motivated, if not compelled, to incorporate the agents of the various religious and ethnic communities into their chiefly councils. A chiefly informant at a town in Wenchi Traditional Area explained this condition thus:

⁶⁷ Emmanuel Akyeampong, "Alcoholism in Ghana—A Socio-Cultural Exploration," *Culture, Medicine and Psychiatry* 19, no. 2 (June 1995): 261–80.

⁶⁸ Yankah, *Speaking for the Chief*, 46.

⁶⁹ Akyeampong, "Alcoholism in Ghana," 262.

⁷⁰ Paul Morris, "The End of Multiculturalism? Religion, Sovereignty and the Nation State.," in *Global Perspective on the Politics of Multiculturalism in the 21st Century: A Case Study Analysis*, ed. Fethi Mansouri and Boulou Ebanga de B'éri (New York: Routledge, 2014), 214.

In the palace when we meet all these sub-chiefs are welcomed. We call them, *Nkonwasofoo* [literally, people of the stool], and when we meet and there is any bylaw that we need to pass, Muslims are represented...; different people whom we have chosen as cultural group leaders are represented so that in case of something, we will pass through them to commute to their tribes or members. And so when we pass any law or something like that it won't conflict with anything.⁷¹

While diffusion of power is not new to traditional political system, we see how the increasing coming together of diverse ethnic and religious groups has necessitated a further fragmentation of traditional chiefly autonomy and power. The “Others” in the chief’s palace have now become indispensable interlocutors and juridical authorities. Indeed, many people have on occasions indicated their preference for their religious leaders over traditional authorities in matters of disputes. As one young woman informant explains why she prefers her religious leaders to the traditional authorities, “as a Christian, I am convinced that God’s laws are supreme and every form of justice can only be found in the laws of God.”⁷² Drawing the leaders of such people into the chiefly courts, thus, helps chiefs to effectively reach out to such people, lessening potential conflict.

Furthermore, as society gradually moves away from traditionalism, there is now emphasis on trust and reliance on Christian leadership. While Gifford, writing on the kind of relationship that exists between Ghana’s pentecostals and their leaders has critically reported that the members “have absolutely nothing except the pastor’s vision,” there is little doubt in the minds of these adherents that, as Gifford acknowledges, many see these “charismatic churches as democracies in microcosm, or places where disputes can be procedurally resolved.”⁷³ It is for this reason that some Christians prefer to send their cases to their churchly leaders rather than relying on traditional authorities. This neglected juridical role of churchly actors means, as I have explained, a shift in religious cultural norms away from an ethno-cultural based ties, distribution of resources and loyalty in society.

Chiefly actors, the occupants of sacred ancestral stools, recognising their loss of formal juridical powers often impose certain coercive sanctions which challenge

⁷¹ Interview with Nana Besseah, December 16, 2014.

⁷² Admittedly, (and this is also confirmed by those traditional and churchly leaders I interviewed) other studies have shown that the nature of the case often determines the particular legal option one opts for. See, for example, Victor S. Gedzi, “Principles and Practices of Dispute Resolution in Ghana: Ewe and Akan Procedures on Female Inheritance and Property Rights” (unpublished: Doctoral dissertation, International Institute of Social Studies of Erasmus University of Rotterdam, 2009), 134.

⁷³ Gifford, *Ghana’s New Christianity*, 188.

constitutional and other state laws in a situation that very often brings them into conflict with state actors too.

2.3.2 The Constitution versus the Sacred Stool

In this section, I examine tensions that occur when the values of constitution and the sacred stool clash. I deal with these tensions under two broad categorisations of the application of individual and communal rights, and chiefly repudiation of state legal manoeuvre.

Just as changing socio-religious demography is a source of tension between chiefly and churchly actors, so too the changing legal realities continue to present challenges. Earlier in Chapter one, in discussing the sources of legal norms in the old sacred traditional society, we indicated that the previous society was ethnically and legally homogenous. The territorial spirits residing in the stool, I pointed out, were central in the legal understanding and practice of this society. In the old state, chiefly actor, the ancestral representatives, used to be the highest form of legal authority in the area of his jurisdiction. In the new state, however, the national Constitution is celebrated as the supreme law and the focus of state legal norms is the regime of individual-based rights. These rights are couched to primarily take precedence over communal claims or the wishes associated with the spiritual forces of society. In the new state too, the Constitution gives a host of fundamental rights geared towards individual liberties. This, to be sure, enhances the flourishing of the individual.

To the extent that the new state has recognised the crucial role of chiefly actors, as the society undergoes changes, the Constitution claims to protect this institution by striking a balance between individual rights and the customary legal norms of society. Article 11 (3) of the Constitution recognises customary law as the rules of law, which by custom are applicable to particular communities in Ghana. Vague definitions such as this leaves the door open for differing interpretations of what constitutes a particular community in an increasingly heterogeneous society. Chiefly actors, I have said, are recognised under the Constitution. The whole of chapter twenty-two of the Constitution is dedicated to the “institution of chieftaincy, together with its traditional councils as established by customary law and usage.” Article 270 (2) provides that Parliament shall have no power to enact laws that affect the chiefly institution. Article 276 (1) also provides that: “A chief shall not take part in active party politics; and any chief wishing to do so and seeking election to Parliament shall abdicate his stool or skin.”

State law presumes that the provision excluding chiefs from active party politics is meant to “protect” chiefly sacrality from being denigrated especially when chiefly actors are

allowed to engage in party politics. Assumptions about the real intentions of the nation-state regarding this particular provision differ. It is logical to suggest, however, that this constitutional provision is a shrewd legal manoeuvre that state actors have put in place to avoid competing with traditional authorities for limited loyalties especially during electioneering campaigns. The legal scholar, Abdullahi Ahmed An-Na'im has noted that in a competitive social and political space, "certain self-appointed elites will claim to speak on behalf of the whole community."⁷⁴ It is, therefore, important that in the discourse of competing claims between state and traditional authorities, the voices and motives behind certain communal activism and legal regulations in society are carefully interrogated. What happens if chieftaincy is introduced to the mainstream politics? In view of the statutory laws regarding the chief's office how do tensions occur still occur? Without a doubt once the state decides which customary norm is to be regulated and enforced, then the outcome is not customary at all.⁷⁵ The institutionalisation of traditional systems of law often leads to certain confusions including the distinction between the people's customary law and what Gordon Woodman has referred to as the "lawyers' customary law."⁷⁶

In light of the above concerns, chiefly actors have been sceptical of state agents. Despite the changing legal realities in contemporary Ghana, chiefly actors continue to see themselves not only as real owners of the land of the new state but also as competing legal authorities. Because activities of state actors are still informed by the centrality of state law, tensions ensue when state actors and traditional leaders invoke their differing authorities. Powerful and influential chiefly actors have relied on their functional indispensability and the massive support base they wield from their subjects to assert their authority in their area of jurisdiction, which sometimes challenges state authorities and decisions. For example, following a series of disagreements between the Kumasi Metropolitan Assembly mayor, Kojo Bonsu, and the Asanteman Council, the latter reportedly called on the President to remove the mayor from office for inveighing the authority of the Asantehene (the Asante king). The state

⁷⁴ Abdullahi Ahmed An-Na'im, "Competing Claims to Religious Freedom and Communal Self-Determination in Africa," in *Proselytization and Communal Self-Determination in Africa*, ed. Abdullahi Ahmed An-Na'im (Eugene: Wipf and Stock Publishers, 1990), 20.

⁷⁵ An-Na'im, "Religious Norms and Family Law," 798.

⁷⁶ Gordon R. Woodman, "How State Courts Create Customary Law in Ghana and Nigeria," in *Indigenous Law and the State*, ed. Bradford W. Morse and Gordon R. Woodman (Dordrecht, The Netherlands: Foris Publications, 1988), 181–220, especially at 182. See also Gordon R. Woodman, "Customary Law, Modern Courts, and the Notion of Institutionalization of Norms in Ghana and Nigeria," in *People's Law and State Law: The Bellagio Papers*, ed. Anthony Allott and Gordon R. Woodman (Dordrecht, The Netherlands: Foris Publications, 1985), 143–63.

newspaper, the *Daily Graphic*, reports that the Council threatened to make the work of the mayor intractable should the President fail to heed to their demand.⁷⁷ Conscious of the political implications of this warning, the mayor apologised to the traditional authorities but this apology was rejected, a situation that compelled him to “voluntarily” resign although the media and a cross section of Ghanaians believe he was kicked out to appease the chiefly authorities.⁷⁸ Some Ghanaians have noted that these types of tensions – between state and traditional authorities – reveal the imperfections of the approach to managing tensions in governance system of Ghana.⁷⁹

State employment of legal manoeuvres has been a source of tension between its authorities and chiefly actors. In discussing the historical development of legal pluralism in Ghana, one of the issues that came up was that legal hybridity was useful for the successful maintenance of law and order because of the multicultural nature of society. Yet the reality of postcolonial society is that the State superimposes its laws on other legal structures of society a situation that pushes chiefly laws into the margins of the legal orders. Chiefly actors have been suspicious of the celebration of state law as the supreme law of the land. For example, despite the separation between chieftaincy and state governance systems, the legitimacy of the chieftaincy largely hinges on state law and not on the custom through which the chief is installed. Section 57 of the Chieftaincy Act defines who chiefs are, and their status. This raises doubts about the kind of separation between chieftaincy and the state. Such state regulation also raises the controversial question of objective and subjective definitions of what a people’s beliefs and customs are.⁸⁰

What the above means is that even though a particular community or group of people might acknowledge the status of a claimant to the stool (or skin, in the case of the northern Ghana) as their chief, such acknowledgement remains only at the community’s or followers’ level. The authority of such a “chief” has no legal standing before the superimposed laws of the State. Unsurprisingly, since in a rapidly changing society and increasingly competitive institution chiefly authorities need the State for the allocation of resources for infrastructural

⁷⁷ Daniel Kenu, “Replace Kojo Bonsu - Asanteman Council Petitions President,” *Daily Graphic*, July 5, 2016.

⁷⁸ I.F. Joe Awuah Jnr, “Kojo Bonsu Kicked Out,” *Daily Guide*, July 12, 2016.

⁷⁹ “Kojo Bonsu Resignation Points to Faulty Governance System – Franklin Cudjoe,” *Myjoyonline.com*, July 12, 2016, <http://www.myjoyonline.com/news/2016/July-12th/kojo-bonsu-resignation-points-to-faulty-governance-system-franklin-cudjoe.php>.

⁸⁰ Winnifred Fallers Sullivan, “Judging Religion,” *Marquette Law Review* 81, no. 2 (Winter 1998): 441–60.

developments, chiefly actors have no better option than submitting to state authority.⁸¹ Those who can afford it often rally the support base they have to challenge the legality of their disqualification a situation that often prepares the ground for chiefly driven violence and disputes. Because of the superimposition of state laws on chiefly actors, despite the law barring chiefs from active politics, they have to one way or the other align themselves with the leading political parties. A victory to such parties is a victory to the chiefs who are sure to benefit from the favourable allocation of resources. As is expected, tensions are sure to ensue if a chief is not in the good books of the new party that comes to power.

State legal manoeuvres lead to tensions especially in terms of individual versus communal rights.⁸² While the nation-state claims to strike a balance between individual rights and chiefly autonomy, this legal balance, as indicated earlier in the Introductory Chapter, is Janus-faced, a double standard provision with several clawback clauses and implications.⁸³ Considering that the Constitution is designed to supersede every other legal norm, overlapping laws of “protection” in the Chieftaincy Act, for instance, becomes a paper tiger, with less or no proper sanctioned force. The constitutional provision of free movement of citizens, for example, has diminished the religious legal foundations of the authority of the chief. It has made it possible for citizens invoking their individual rights under the Constitution to challenge the very constitutional and other regulatory frameworks that consolidate the chief’s privilege. Some citizens have gone to the extent of seeking judicial interpretations of such frameworks. For example, in the landmark case *Nana Adjei Ampofo v. A.G. and anor*, the plaintiff, a lawyer and ex-Paramount Chief and member of the National

⁸¹ Ray, “Divided Sovereignty,” 188.

⁸² In its willingness to conform to legal and human rights standards elsewhere, the State in 1986 officially engineered a transfer of power to the individual. Among other moves, it passed a set of legislations that specifically focused on traditions of inheritance, especially women’s property inheritance rights, which for a long time was a subject of much academic interest and popular concerns. These laws included the Intestate Succession Law, 1985 (PNDCL 111); the Customary Marriage and Divorce (Regulation) Law, 1985 (PNDCL 112); the Administration of Estate (Amendment) Law, 1985 (PNDCL 113); and the Head of Family (Accountability) Law, 1985 (PNDCL 114). For international human rights implications of the Intestate Succession Law. See, for example, Victor Selorme Gedzi, “PNDC Law 111 in Ghana and International Human Rights Laws,” *Global Journal of Politics and Law Research* 2, no. 2 (June 2014): 15–26. The legacy of these laws was that they sought to remove anomalies in the existing law at the time relating to intestate succession. These laws focused attention on the conjugal family, putting less emphasis on the extended family. It is instructive, however, that due regard was given to the disposition of the collective properties that belonged to the extended family. For a discussion on the practical challenges associated with these laws, see, for example, A. K. P. Kludze, “Accountability of the Head of Family in Ghana: A Statutory Solution in Search of a Problem,” *Journal of African Law, Essays in Honour of A. N. Allott*, 31, no. 1/2 (Spring 1987): 107–18.

⁸³ For a discussion on clawback clauses in African constitutions, see Makau wa Mutua, *Human Rights: A Political & Cultural Critique* (Philadelphia: University of Pennsylvania, 2002), 83.

House of Chiefs, sought the interpretation of the Supreme Court on whether or not Section 63(d) of the Chieftaincy Act, among others, “can be applied in contemporary Ghana in its pristine purity.”⁸⁴ The plaintiff argues that the section, while privileging communal claims, especially the jurisdiction of the chief, unduly restricts and interferes with individual autonomy especially their freedom of movement which includes the freedom to stay away from where the individual does not want to be. The Supreme Court invoked its authority under Article 2 of the Constitution and held that the said section must be expunged, deleted and struck out from the Chieftaincy Act on grounds of its unconstitutionality.⁸⁵

The implication of this case is that with the ongoing modernising and secularising project of contemporary Ghanaian society, communal values have come under intense scrutiny in favour of individual freedom. It also affirms the claim that while chiefly actors have been given their own jurisdictional autonomy, in the attempt by the nation-state authorities to establish a distance between the state and [traditional] religion, chiefly office has invariably come under certain legal regulations which undermine the religious foundations of the institution. The *Nana Adjei Ampofo v. A.G. and anor*, case is, to be sure, an important test case for secularism in contemporary Ghana. It represents one of the important Ghanaian jurisprudence cases on religious freedom and the moral autonomy of the individual. The case is important because it articulates the discursive boundaries and limitations of chiefly authority in contemporary Ghana. The case also serves as a precedent for future legal decisions concerned with traditional political structures and institution. This is because while there were no known cases where the said provision of the Act was invoked by any chief, the State has argued that at any point, a chief wishing to assert his authority could use it to sanction individuals who violates chiefly orders. Such sanctions, in the new state also clearly violates individual autonomy hence the need for state legal regulation.

In making sense of state versus chiefly actors tensions it is imperative to critique how the supremacy of state law skews our understanding away from the realities of plural legal societies. As noted already, the Constitution, which claims to represent the interests of all actors, is shrewdly used by state agents to keep from active participation real and perceived

⁸⁴ The said section states: “A person who deliberately refuses to honour a call from a chief to attend to an issue, commits an offence and is liable on summary conviction to a fine of not more than two hundred penalty units or to a term of imprisonment of not more than three months or to both and in the case of a continuing offence to a further fine of not more than twenty-five penalty units for each day on which the offence continues.” For details of the case see *Nana Agyei Ampofo v Attorney General and the President of the National House of Chief*, 38 Ghana Monthly Judgements 134–73 (Supreme Court 2011): 134–73

⁸⁵ 38 GMJ [2011]: 172.

competitors, especially religious and customary authorities. The constitutional prohibition of chiefs from engaging in active party politics supports this claim. Article 276 (1), I have pointed above, recommends that: “A chief shall not take part in active party politics; and any chief wishing to do so and seeking election to Parliament shall abdicate his stool or skin.” There was a feeling among some of my chiefly informants that through civil legal instruments, state actors achieve a general process of manipulative exclusion of chiefly influence in society.⁸⁶ The unitary conception of state law was decried by some of these chiefs as the basis for the diminution of chiefly powers. According to one informant, unlike the voluntary diffusion of their authority, the fragmentation of their powers due to the superimposition of state law is the basis for lawlessness as chiefs are limited in the kinds of sanctions they can impose.⁸⁷ It has been observed that chiefly leaders desiring to maintain the primal relations in society often impose outlawed punitive sanctions, a situation that raises tensions in society.⁸⁸

Incidences such as the Supreme Court decision cited above have led to open and silent confrontations between chiefly actors and national authorities because chiefly actors do not have a strong positive attitude towards the state’s tacit regulation of their office. Certain state decisions and activities have been undermined and the authority of state actors has often been questioned by chiefly actors in their territory as was the case between the mayor and the Asanteman Council. Meanwhile, some decisions taken by the Regional and National Houses of Chiefs have also been overturned, nullified or struck out by the State through the civil courts. Some, including then President of the National House of Chiefs, Naa Professor John S. Nabila, have raised concerns at the implications the Supreme Court’s decision has on the moral foundations of the new society.⁸⁹ Legal scholars have also cautioned state authorities that legal interventions such as this ruling will not only further weaken chiefly authority but will also slow the developmental progress of contemporary Ghana.⁹⁰

⁸⁶ Interview with Nana Besseah, December 16, 2014 and Nana Abubakar, March 22, 2015.

⁸⁷ Interview with Nana Abubakar, March 22, 2015.

⁸⁸ Seth Tweneboah, “A Clash of Legal Norms: Banishment as a Customary Religious Sanction in Ghana,” *Journal of Law, Religion and State* 5, no. 2 (2017): 87–116.

⁸⁹ “National House of Chiefs Meet over Supreme Court Ruling,” *Daily Graphic*, August 29, 2011.

⁹⁰ Naa Sakwaba Akwa, “Law Professor Warns against Weakening of Chieftaincy Institution,” *Myjoyonline.com*, December 12, 2014, <http://www.myjoyonline.com/news/2014/December-7th/-law-professor-warns-against-weakening-of-chieftaincy-institution.php>.

The Constitution provides that chiefly actors apply the customary law operative in their particular communities. Tensions often occur when the other side of Ghanaian democratic values is invoked which state that the constitutional law must be the final arbiter in matters of overlapping interest. It is often argued that an external position to mediate in times of conflict is necessary otherwise no definite solution can be found. Chiefly actors have sometimes undeniably exceeded their limit in the application of customary sanctions. In some societies, chiefly leaders have imposed banishment on their challengers as a way of asserting their authority in their territory.⁹¹ This is evidenced in the case between the Dormahene (Paramount Chief of Dormaa) and the hospital administrator. In this case, the hospital administrator was banished from the said town after disagreement between the chief (also a legal professional) and the hospital administrator over the construction of a new mortuary for the area.⁹²

Taking lessons from the events of the colonial and immediate postcolonial periods, state legal norms have continually been used as a means of subtly diffusing traditional chiefly power. While these laws are used to enhance individual autonomy and self-assertion, it is also deployed as a mechanism for weakening the dominant hierarchical normative or power pyramid of traditional society.⁹³ In a modernising, multi-cultural and multi-ethnic society, state law is ideally presented as “an objective, external and neutral truth”⁹⁴ capable of reconciling opposing interests and claims, in this case, group and individual interests. But it is also tempting to ignore the fact that, as a shared sovereign state, national authorities are not merely neutral arbiters of overlapping claims, neither are they secular police enforcing the tenets of secularism. Rather, while they represent the diverse sources of law in the state, they are likewise competitive and rival form of political and juridical actors.

From the discussion above, it is reasonable to postulate that if relying on the supremacy of state law will enhance the comparative advantage of state actors in the struggle for power, influence and recognition, then doing so becomes an expedient decision for them. William Cavanaugh’s *Migration of the Holy* further strengthens this claim. This notion aids

⁹¹ Tweneboah, “A Clash of Legal Norms.”

⁹² Samuel Duodu, “Hospital Administrator Flees Dormaa as Traditional Authorities Banish Him,” *Daily Graphic*, February 25, 2014.

⁹³ For a discussion on hierarchical normative structures, see Cohen, *Globalization and Sovereignty*, 113.

⁹⁴ Ratna Kapur, *Erotic Justice Law and the New Politics of Postcolonialism* (London: Glasshouse Press, 2005), 21.

us to understand part of the contradiction in the state-religion separation argument. Significantly, while none of the other two non-state authorities (chiefly and churchly actors) have the power to invoke certain sanctions such as death penalty, for example, in the name of national interest, state actors can and actually do impose the very sanctions religion-based actors cannot impose.⁹⁵ The same can also be said of the constitutional provision that prevents chiefly actors from engaging in active party politics. State actors have argued that preventing chiefly authorities from participating in active party politics will lead to the protection of their sacred and revered position in society. But the reality, a common knowledge in Ghana, is that notwithstanding this constitutional limitation, because of the influence of chiefly actors in their communities, political actors have consistently used chiefly influence to mobilise voters.

The implications of the state agents' attempt to assert individual sovereignty on chiefly actors are enormous including certain residual setbacks in society. With the ongoing diminution of chiefly authority, some chiefs recognising their lingering juridical powers and control of their territory, repudiate state law by imposing proscribed ancestral sanctions such as banishment.⁹⁶ This is because the chiefs are aware that the arms of the state cannot be stretched far enough to reach chiefly-controlled territories. As one chiefly informant argues: "while the President [the State] has the power to make laws against my custom, can he come and enforce them here?"⁹⁷ The repercussion of such statements are enormous and calls for reflection. First, it suggests an obvious chiefly resistance of state authority. Second, it reveals chiefly awareness of the weaknesses of the postcolonial nation-state. Chiefly actors know that despite the presumed supremacy of state law, ancestral customary legal norms and chiefly sacral authority are still pivotal in the new state.

Third, such challenges have led to the imposition of chiefly sanctions which are a contradiction of state legal norms and also a hindrance to the moral autonomy of the offender. Such situations also violate the individual's other human rights under the national Constitution and international human rights treaties of which Ghana is a signatory. But it is also important to understand that some of these violations are not always a deliberate chiefly

⁹⁵ William T. Cavanaugh, "'A Fire Strong Enough to Consume the House': The Wars of Religion and the Rise of the State," *Modern Theology* 11, no. 4 (1995): 397–420. See also Paul W. Kahn, *Sacred Violence: Torture, Terror and Sovereignty* (Ann Arbor: The University of Michigan Press, 2008), 132.

⁹⁶ Duodu, "Hospital Administrator Flees Dormaa as Traditional Authorities Banish Him," 3.

⁹⁷ Interview with A.T., Tanoboase, March 8, 2015.

repudiation of state laws. Rather, some of these embody chiefly ignorance of not only their own custom as Archbishop Sarpong posits, but also the civil law structures of the nation-state. For example, the majority of chiefly actors are unaware of the Chieftaincy Act. This situation makes its enforcement difficult for them and for the nation-state.

Tensions often result from the proper constituency of chiefly powers especially in matters related to the adjudication of criminal cases. In the old state, the chief presided over such cases.⁹⁸ However, the postcolonial nation-state law forbids the handling of such cases outside the civil courts except under circumstances deemed necessary by the courts. The problem facing the new state is that given that it does not have a strong presence at the grassroots level, traditional authorities continue to handle such cases. On 3 January, 2016, for example, at a town in the Techiman Traditional Area, a group of six men was charged with diverse degrees of stealing. Although this town has a police station, according to my informant, the accused were sent to a sub-chief's palace for customary redress. After they were customarily pronounced guilty, they were flogged as part of their customary sanctions. To be sure, incidences of this nature are not limited to this community. Rather, such cases betray the neglected dimension of daily governance in contemporary Ghana. They tell the story of the pervasive legal role of religious and customary authorities in a secular society.

The dual commitment of the nation-state to protect its laws and communal interests often ends up in clashes between state actors and traditional authorities. Article 89 (2b) of the Constitution provides that the President of the National House of Chiefs shall be a member of the Council of State, the highest advisory body of the President of the Republic. Under article 242 (d) of the Constitution, it is proposed that the President's appointment of metropolitan, municipal and district chief executives must be done in consultation with traditional authorities in the area. The tension between political leaders and chiefly actors has been that in cases where a chief's preferred candidate is not nominated by the President, the affected chiefs are said to mobilise their subjects to challenge such governmental nominations.⁹⁹ There have also been reported cases of actual and symbolic threats of violence and bloodshed from some Traditional Councils particularly in cases where the chief's kinsmen are not

⁹⁸ Chris Abotchie, *Social Control in Traditional Southern Eweland of Ghana: Relevance for Modern Crime Prevention* (Accra: Ghana Universities Press, 1997), 51.

⁹⁹ Emmanuel Modey, "Chiefs Kick against Renomination of DCE," *Daily Graphic*, August 20, 2013; Emmanuel Akli, "Election of DCEs Could Be Dangerous," *The Chronicle*, December 22, 2011.

nominated.¹⁰⁰ Often these cases are discussed in terms of the challenges the chiefs pose to the nation-state neglecting how the nation-state also undermines chiefly authority in a functional plural legal society.

The above situations therefore reveal the levels of complexities of contemporary Ghanaian legal authorities in tension. The Supreme Court case discussed earlier, for instance, prompts a clarification of chiefly rights, generally. But such situation also stimulates the need for finding appropriate ways of adhering to the principles of legal pluralism. The challenge, however, is that under certain complex circumstances where the various state and chiefly orders clash, the end decision has been to leave the civil courts to decide. That is, situations like these are presumed to call for the need for state regulation of chiefly power, a situation which brings about a clash between state authorities and the individual, on the one hand and chiefly actors, on the other, thus the problem repeats itself in vicious circles.

2.3.3 The Clash of Sacred and Secular Actors

Despite state recognition of religious and customary institutions, the postcolonial nation-state actors do not seem to have a positive attitude towards the full autonomy of chiefly and other religious leaders, a condition which results in tension. The next type of tensions I discuss therefore involves state and non-state actors. In this type of tension what seems to be antagonistic sacred (churchly and chiefly) actors come together to resist what they deem as the superimposition of secular (state) powers. This kind of tension is a crucial one occurring as a result of diverse reasons including the State's desire to maintain its imposed sovereignty and legal authority, overlapping individual and communal values.

In terms of tensions occurring over the State's desire to maintain its imposed sovereign authority, it is worth mentioning that the two types of tensions discussed so far have revealed that there is a continuous reorganisation of contemporary Ghanaian society, especially in terms of jurisdictional authority. Part of this reorganisation involves certain steps. First, there is a challenge of determining how the state can maintain its imposed secular sovereignty in a religiously, culturally and ethnically saturated society. Achieving this end generates the difficulty of how to strike a proper balance between the autonomous individual and the religious-customary community. Second, as a state party to international human rights norms, there is pressure on the new state to modify its religious and customary norms

¹⁰⁰ Malik Abass Daabu, "Tension in Atebubu over Confirmation of DCE," Myjoyonline.com, (August 27, 2009), <http://politics.myjoyonline.com/pages/news/200904/29302.php>.

to conform to international human rights standards.¹⁰¹ As a consequence, there is a competition not only between the religious-customary community and the individual, but also even within the new nation-state a competition between the different legal levels.¹⁰² Moreover, there has also been what the former UN Secretary-General, Kofi Annan has called a movement of state sovereignty towards human sovereignty, that is, “the peoples’ sovereignty rather than the sovereign’s sovereignty,” Annan describes the situation thus:

State sovereignty, in its most basic sense, is being redefined—not least by the forces of globalisation and international co-operation. States are now widely understood to be instruments at the service of their peoples, and not vice versa. At the same time individual sovereignty—by which I mean the fundamental freedom of each individual, enshrined in the charter of the UN and subsequent international treaties—has been enhanced by a renewed and spreading consciousness of individual rights.¹⁰³

Annan’s definition brings another dimension of a shared sovereignty, which further challenges nation-state sovereignty. To be able to maintain its superimposed hold on the dominant religious and customary systems and actors, agents of the nation-state largely present themselves as representing the interest of “the abstract individual rather than the concrete community.”¹⁰⁴ Religious and customary normative systems and authorities are also mainly presented by the nation-state as a challenge to the core principles, “the *constitutive* values of liberal and democratic political systems,”¹⁰⁵ to wit, human dignity, basic rights and popular sovereignty. These constitutive values of the new nation-state are believed to allow for the flourishing of individual rights – to be sovereign in their choices and activities. Owing to the strong influence of religion and custom in contemporary Ghana, however, chiefly and other religious actors have raised suspicion that the state insistence on individual rights is an attempt to secularise the society.

Because the combined powers of religion-based actors are perceived as posing great challenge to the new state, there has been some concerns that when the state gives them enough purchase through non-state justice delivery systems such as alternative dispute

¹⁰¹ An-Na’im, “State Responsibility.”

¹⁰² Leopold Pospisil, “Legal Levels and Multiplicity of Legal Systems in Human Societies,” *The Journal of Conflict Resolution* 11, no. 1 (March 1967): 2–26.

¹⁰³ Kofi Annan, “Two Concepts of Sovereignty,” *The Economist*, September 16, 1999.

¹⁰⁴ Will Kymlicka, ‘Liberalism, Individualism, and Minority Rights’, in *Law and the Community: The End of Individualism?*, ed. Allan C. Hutchinson and Leslie J.M. Green (Toronto: Carswell, 1989), 183.

¹⁰⁵ Jocelyn Maclure and Charles Taylor, *Secularism and Freedom of Conscience*, trans. Jane Marie Todd (Cambridge and London: Harvard University Press, 2011), 11.

resolution mechanism, for example, it may weaken due process guarantees and other procedural protections.¹⁰⁶ The argument has been that such developments raise concerns over human rights violations and access to justice hence the need for the state to assert its “neutral” powers. In the attempt by the state to assert its imposed authority and influence, the seemingly competing religious traditions come together. These subtending religious actors ally themselves particularly in cases wherein they perceive state intrusion into “traditional” and natural familial values, such as issues of same-sex relationships. Elsewhere such alliances have been described as “unholy alliance.”¹⁰⁷ In coming together, these sacred actors use their common spiritual capital to construct a “novel political space”¹⁰⁸ in their confrontations with secular actors and other non-religious activist movements. Later in Chapter four, I expound this particular form of alliance. Because of this, in this part of the discussion, I briefly highlight the nature of tensions and how they arise. The discussion will help advance the view that under certain conditions, state actors rely on the final appeal of the law to strengthen the state’s coercive powers and to legitimise their claim to authority. This type of analysis also offers further evidence of how religion and customary values continue to be significant source of legitimising moral behaviour, regulating any potentially excessive form of universalism.

The complexity of this type of tension is that while the various religious authorities ally together to resist certain state activities, there are yet occasions where the religious bodies themselves have had to rely on the state’s final level of appeal in order to settle any legal conflict between and within them. Some churchly leaders and their members have appropriated the benefits of civil law structures, seeking legal declarations from the jurisdictions of the civil courts for justice to be done. According to an evangelist informant, civil law structures are significant especially when it comes to giving equal protection to religious competitors. The evangelist, who is perceived in his area as controversial, argues:

it [state law] is even what has made us comfortable. Had it not been government law, people will come to my church and assault me and go. They will come and take the property in the church and go. They can come and do any *patapaasem* [bluffness?] and go. But because of government law when anyone is coming to the church, they are afraid. And so as for the

¹⁰⁶ International Council on Human Rights Policy, “When Legal Worlds Overlap: Human Rights, State and Non-State Law” (Versoix, Switzerland: International Council on Human Rights Policy, 2009), vii.

¹⁰⁷ Mary E. Bendyna et al., “Uneasy Alliance: Conservative Catholics and the Christian Right,” *Sociology of Religion* 62, no. 1 (Spring 2001): 51–64.

¹⁰⁸ Juan Marco Vaggione, “Reactive Politicization and Religious Dissidence: The Political Mutations of the Religious,” *Social Theory and Practice* 31, no. 2 (April 2005): 340.

government law, it really helps Christianity. It is what has made Christianity what it is, otherwise idol worshippers wouldn't even give us our peace of mind.¹⁰⁹

Despite this, struggles between state and religious-based actors occur owing to the different, sometimes overlapping, approach to issues of justice, fairness, universalism, and human rights. Both traditional and non-traditional religious groups, undoubtedly offer alternative approach to issues of human rights, which are informed by their religious convictions and moral norms. Issues such as impartiality, universal brotherhood, sacrality of the human soul, equality, etc., are common themes cherished by all major traditions in Ghana.¹¹⁰ At the same time, while the nation-state might be offering these, the state's approach are criticised by traditional and churchly leaders, a situation which crystallise into conflict. Churchly leaders, for example, argue that such issues must be approached in the right way, that is, the Christian – God's – way, ensuring that Christian values carefully underpin all activities and sectors of society. These values, thus, become points of departure for dialogue and compromise a situation leading to conflict and legal controversies.

Religious actors sometimes suspect certain state modernising policies as a ploy to secularise (Westernise) the society. As a result, state policies are met with doubts. Practical example of tensions occurring from this situation can be found in state policy regarding religious and moral education. In 2007 the Ghana Education Service (the GES) as part of its new educational reform, directed that all educational sectors under it must scrap the teaching of Religious and Moral Education as a subject from its syllabus in the basic schools. Some officials of the GES and other social and media commentators and analysts supported this as a good mechanism of the nation-state achieving a full secular status. A 25 November, 2007 editorial of the *Daily Graphic*, the major state newspaper, for example, invoked the secular argument urging Ghanaians to “bear in mind that Ghana, as a secular country, has not got a uniform religious policy.”¹¹¹

Yet, this decision brought tension between state and religious actors. The latter raised objections over the dire consequences this directive will have on the religious and moral foundations of society particularly the proper character formation of the youth. Some accused the government of yielding to external influence from Satanist (Western) cults in an attempt to destroy the country. As Atiemo, citing an aggrieved caller in a radio phone-in programme

¹⁰⁹ Interview with Evangelist A on February 15, 2015.

¹¹⁰ Atiemo, *The Inculturation of Human Rights*, 176–78.

¹¹¹ Editorial, “Resolving the Controversy over RME,” *Daily Graphic*, November 25, 2007.

observes, “the president was bowing to pressures from Europe and America where satanic powers influence government policies.”¹¹² Such concerns echoes part of the assumption of this thesis, namely that religious, narratives, polemics and imaginations largely serve as a premise through which certain national debates are engaged.

The Ghana Catholic Bishops Conference (the Bishops), for example, responded with defiance urging the government to rescind its decision. Spurning this governmental order, the Bishops instructed their educational directors to defy the government’s directive by going ahead to teach the said subject. The Christian Council of Ghana, Muslim groups and some traditional actors supported the Bishops’ argument by vehemently opposing the government’s decision. With such enormous pressure from sacred actors, the secular state withdrew its decision and ordered that the subject be reintroduced but be made non-examinable – to be examined only internally. The Bishops, again, rejected this offer, insisting that the subject still be made examinable,¹¹³ thus raising issues of competing jurisdictional authority in a professed secular state.

The above analysis leads to the observation that the very ideas of secularism have been challenged particularly in cases where substantive state law overlaps with non-state normative orders. This condition sometimes results in clashes between state and non-state actors whose power is underpinned by religion.

2.4 Conclusion

An analysis of many postcolonial states of Africa reveals that incidences of tensions exist in varied and complex forms. It also reinforces the fact that there is a clash between the old sacred sovereign states and the modern secular states. There is a constant struggle between the different forms of normative actors in the modern nation-state. Each of these forms of tensions also depicts how power plays out in society particularly when religious freedom is invoked. Hence, a discussion of the struggles resulting from the different legal schemes in contemporary Ghana must also take into account the agents of the divergent sources of law and authority.

This chapter has offered insights into how the clash of the various actors and systems yields to different types of tensions. It has noted that the old social and political setup was quintessentially a sacred sovereign one. The central most important figure in this state was

¹¹² Atiemo, *The Inculturation of Human Rights*, 106.

¹¹³ *Daily Guide*, January 5, 2008

the chiefly actor who is the occupant of the sacred stool of the ancestors, the primal founders of the traditional state. In the modern secular nation-state, however, the chapter has shown that there exist three-dimensional forms of power and authority in terms of how state and non-state legal norms and structures operate. In the new state, while power is presumed to reside in the state political actors, traditional authorities continue to maintain their influence, albeit in an informal form. There is also the office of non-traditional religious leaders, whose role as equally competitive non-state actors has seldom been given proper attention in scholarly studies. I have articulated the role of religious actors in political mobilisation, trans-ethnic relations, as well as social networks in Ghanaian postcolonial state. Under these three-dimensional forms of power, I have contended that there is a struggle and competition for a limited jurisdiction as well as influence, control and loyalty of unstable followers. This generates tensions in which religion and law are invoked.

The relevance of this chapter to the larger discussion is that I have demonstrated how each of these power-exercising agents possesses enormous but overlapping forms of shared public authority and influence and how struggles result from this. I have interrogated how in spite of scholarly works privileging state power, in the political modernity of Ghana, albeit the separation between religion and the state, in terms of real power and authority, none of these three actors is independent.

Through my analysis of select cases, I have clarified that the division of the society into secular and sacred realms is not neat. State agents and legal norms interact with religious functionaries at various levels. In most areas where there is limited or non-existent state presence, people either appeal to customary norms and worldviews or their religious authorities in addressing their problems. This situation has led to fragmentation of legal powers, authority and jurisdiction. I have admitted that potential and actual high tensions, unstable conflicts, violent confrontations and bloody clashes occur when each of the identifiable actors invoke their overlapping constitutional rights and mandate or appeal to the influential support they possess from the masses. Nonetheless, my analysis demonstrates that these clashes resulting from the manifest involvement of religion-based actors in the public space also buttress the indispensable and multifaceted nature of religion in the governance of postcolonial secular Ghanaian society.

The chapter contributes to scholarly discussion of the continuous role of customary norms. Customary norms as they exist today, I have pointed out, are constitutionally recognised. This notwithstanding, its legal definition poses certain challenges especially in terms of what constitutes a “particular community” in a society which has increasingly

become ethnically and culturally heterogeneous as well as religious and legally plural. The insistence of the differing ethnic, cultural and religious groupings on the application of their norms lead to diverse forms of contestations in society. My analysis has therefore suggested that a good appreciation of the situation must take into consideration not merely the historical processes through which the three phases of Ghana's political and legal systems have undergone, but also the "now."

CHAPTER THREE: CHILD WITCHCRAFT OCCURRENCES AND MALTREATMENTS

3.1 Introduction

One outcome of the transition from the sacralised traditional state to the secularist one is the competing claims of religious-customary and secular ideals. Not only do the actors of the earlier state refuse to submit to what they consider as the imposed sovereignty of the new secular state but also the pull of religious and customary beliefs of the old state continues to be both evident and dynamic. In this chapter, I continue with the exploration of the interrelationships of the various normative traditions in Ghana. I highlight the extent to which religious convictions and customary worldviews are used by both families (parents) and children to respond to the discontents of secular society. I analyse how people employ religious imaginations to locate themselves in the changing society. I use beliefs in the existence of witchcraft as a case study. I place special focus on child witchcraft in contemporary Ghana which has received little academic attention.¹ These

As a point of departure from previous analyses of witchcraft, I make a distinction between passive and self-bewitched. The former are socially ascribed witches who have little or no control over their situation. The former, the major focus of the discussion are what I term as those who are insiders and experts of their own stories and situation. By placing emphasis on the self-bewitched, I provide a rationale for engaging in critical analysis of the often-ignored autobiographic accounts of confessed witches. I claim that in a desperate effort to fit into the uncertain society, disenchanted children tap into witch spirits as a levelling mechanism in their attempt to ensure social equity in society. As contemporary Ghana undergoes growing socioeconomic, political, legal, religious and moral changes following post-colonialism and modernisation, I claim, self-confessed witches mobilise and utilise witchcraft powers to find meaning in life.

I seek to accomplish three goals in this chapter which are in line with the overall objectives of this thesis. I show how, in the first place, child witchcraft phenomenon pinpoints the resilient nature and adaptive capacities of indigenous religious and customary beliefs and practices in the face of the secularisation of contemporary Ghana. In the second place, I examine how as the various normative systems clash, belief in witchcraft becomes an

¹ See Mensah Adinkrah, "Child Witch Hunts in Contemporary Ghana," *Child Abuse and Neglect* 35 (2011): 741–52.

adaptive coping mechanism for disenchanted children. We will see that in the face of increasing postcolonial uncertainties, religious imagination opens up spaces for marginalised children to (re)create their identity in society. In the third place, I raise the need to reconsider accounts that blame religious ritual specialists such as pentecostal pastor-prophets. Contrary to accounts that implicate pastor-prophets in witchcraft ritual narratives, this chapter illustrates how these pastor-prophets have become indispensable in witchcraft activities due to the realities of postcolonial marginalisation.

3.1 Background to Ghanaian Witchcraft Hysteria

Witchcraft belief is part of a general African worldview that the world consists of spiritual and mundane realities and that the visible and the invisible world are interlinked.² Belief in witchcraft and evil spirits is a prevalent phenomenon in Ghana and most of Africa. A 2010 Gallup survey, for example, indicates that 77% of younger Ghanaians believe in the reality and impact of witchcraft.³ Research from Pew Religion and Public Life in 2010 similarly shows that 53% of Christians and 37% of Muslims in Ghana believe in evil spirits. This research also indicates that 51% of Christians and 37% of Muslims believe in witchcraft. Because of the prevalent belief in witchcraft in Ghana, until 2015, there were at least six witch camps, villages where thousands of accused witches were banished to or fled for their safety. Some of these camps have been in existence for several centuries.

As a general belief, witchcraft belief transcends religious, social, economic, and professional boundaries and status.⁴ Max Assimeng, the Ghanaian sociologist of religion has provided a list and background of supplicants who employed the services of a traditional ritual specialist for various securities. The sample includes virtually all categories of professions and supplicants: bankers, petty traders, commercial drivers, university professors, farmers, chiefly candidates, etc.⁵ In such a situation, as E.A. Asamoah has maintained, “It

² Max Assimeng, *Religion and Social Change in West Africa: An Introduction to the Sociology of Religion*, Second Edition (Accra: Woeli Publishing Services, 2010), 65.

³ Bob Tortora, “Witchcraft Believers in Sub-Saharan Africa Rate Lives Worse” (Gallup, August 25, 2010), <http://www.gallup.com/poll/142640/witchcraft-believers-sub-saharan-africa-rate-lives-worse.aspx>.

⁴ Gustav Jahoda, “Supernatural Beliefs and Changing Cognitive Structures among Ghanaian University Students,” *Journal of Cross-Cultural Psychology* 1, no. 2 (June 1970): 115–30.

⁵ Assimeng, *Religion and Social Change in West Africa*, 180–87.

would be unrealistic to tell the African Christian that there is no witchcraft, or that it is the creation of man's mind: the positive and constructive fact is that witchcraft is real."⁶

The above helps explain why and the extent to which witchcraft is used to account for and also manage socioeconomic, political and legal problems in contemporary Ghana. I show that because witchcraft beliefs are held as real, they create a psychosocial frame of reference through which certain hard-to-accept challenges in life are interpreted.⁷ At the same time, due to the changing religious demography and other normative systems, approaches to witchcraft belief differ, sometimes raising legal and human rights tensions. I explore the interrelationships between social, economic and political conditions that occasion witchcraft hysteria. More specifically, I assess the tensions and dynamics of these interactions in their historical contexts. Understanding such interactions provides insights into the role religious convictions and customary values play in the ongoing transition in society.

Witchcraft is a major channel through which both the traditional and contemporary Ghanaian societies respond to concepts of evil, misfortune and insecurity.⁸ Although witchcraft spirit is thought to be good, the underlying belief is that it can and does kill or destroy its possessors.⁹ Owing to its alleged baneful powers, accused witches have historically gone through diverse forms of customary sanctions. The English writer and traveller, Thomas Edward Bowdich, writes that among the Asante, by 1817, accused witches or those accused of "having a devil," were tortured to death.¹⁰ He explains that people believed to be maleficent "were immediately to be destroyed for the safety of mankind."¹¹ Brodie Cruickshank, a member of the colonial Legislative Council, Cape Coast Castle, also observes that among the Fanti of Anomabo (an Akan group) a man "unanimously

⁶ E.A. Asamoah, "The Christian Church and African Heritage," *International Review of Mission* 44, no. 175 (July 1955): 292–301.

⁷ Abraham Akroong, "A Phenomenology of Witchcraft in Ghana," in *Imagine Evil: Witchcraft Beliefs and Accusations in Contemporary Africa*, ed. Gerrie ter Haar (Trenton and Asmara: African World Press, 2007), 57; Jean Allman and John Parker, *Tongnaab: The History of a West African God* (Bloomington & Indianapolis: Indiana University Press, 2005), 121.

⁸ Gerrie ter Haar, ed., *Imagining Evil: Witchcraft Beliefs and Accusations in Contemporary Africa* (Trenton and Asmara: African World Press, Inc., 2007); Field, *Search for Security*.

⁹ Margaret J. Field, *Akim-Kotoku: An Oman of the Gold Coast* (Westport, Connecticut: Negro Universities Press, 1948), 174.

¹⁰ Thomas Edward Bowdich, *Mission from Cape Coast Castle to Ashantee: With a Statistical Account of That Kingdom, and Geographical Notices of Other Parts of the Interior of Africa* (London: John Murray, 1819), 260.

¹¹ Bowdich, *Mission from Cape Coast Castle*, 508.

pronounced a wizard” was drowned.¹² By 1915, however, according to the historian, William Claridge, witchcraft was of “comparative and increasing rarity.”¹³ Even so, Claridge attests to occasions where accused witches were roasted alive.

By the 1920s witchcraft offences were punishable by banishment. According to Rattray, accused witches used to have a firebrand placed in their hands before they were expelled from the community.¹⁴ This, as Rattray explains, amounts to the death penalty. As we have sought to explain in Chapter one, the precolonial conception of rights was lineage-based. Banishing someone from the confines of their kinsmen was therefore a denial of all rights including, implicitly, their right to life. The change from the death penalty to banishment is interesting and needs further research. Yet, a good guess can be made from our discussion in Chapter one that the arrival of European religious norms and legal systems in the host society had significant influences especially on the kind of sanctions meted out to customary offenders.

Bafflingly, however, between the 1920s and the 1960s there were increasing rates of accusations of witchcraft in Ghana.¹⁵ This was also a period of the flourishing of new religious movements, also called anti-witchcraft movements, within the traditional religion. These movements sought to protect people from witchcraft and to also exorcise possessed witches. Their activities became a subject of legal and political contestations between the colonial government and mission Christianity, on the one hand, and the traditional authorities and the operators of the shrines, on the other hand.¹⁶ Owing to its pervasiveness in society, the colonial government under the Native Administration Ordinance of 1927, for example, empowered local chiefs to handle cases of witchcraft accusations.¹⁷ But because the

¹² Brodie Cruickshank, *Eighteen Years on the Gold Coast of Africa, Including an Account of the Native Tribes, and Their Intercourse with Europeans*, second edition, vol. 2 (New York: Barnes & Nobles, Inc., 1966), 179.

¹³ Claridge, *A History of the Gold Coast and Ashanti*, 1:532, 477.

¹⁴ R.S. Rattray, *Religion and Art in Ashanti* (Oxford: The Clarendon Press, 1927), 29.

¹⁵ Barbara E. Ward, “Some Observations on Religious Cults in Ashanti,” *Africa: Journal of the International African Institute* 26, no. 1 (January 1956): 47–61; Field, *Search for Security*.

¹⁶ Natasha Gray, “The Legal History of Witchcraft in Colonial Ghana: Akyem Abuakwa, 1913-1943” (unpublished: Doctoral dissertation, Columbia University, 2000); Natasha Gray, “Witches, Oracles, and Colonial Law: Evolving Anti-Witchcraft Practices in Ghana, 1927-1932,” *The International Journal of African Historical Studies* 34, no. 2 (2001): 339–63.

¹⁷ Gray, “Witches, Oracles, and Colonial Law”; Natasha Gray, “Independent Spirits: The Politics of Policing Anti-Witchcraft Movements in Colonial Ghana, 1908-1927,” *Journal of Religion in Africa* 35, no. 2 (2005): 139–58.

establishment of proof of possessing the witch-spirit fell outside the realm of chiefly authorities, they relied on witchcraft ritual specialists. This situation, in turn, gave more room for further abuses such as the administration of the poison ordeal. Under this methods, accused witches were made to drink or “chew *odum*” (sasswood, *Erythrophleum guineense*) in order to prove their innocence. Besides, many complained about the humiliating manner in which patronisers of the anti-witchcraft shrines, particularly women, were subjected to including stripping some of them naked.¹⁸ In 1930, the colonial government passed the Order-in-Council (No. 28) that revoked the powers of the chiefs to try witchcraft cases.¹⁹

Considering that the encounter possibly led to a “comparative and increasing rarity” in witchcraft cases, it is curious that the colonial state would suddenly experience widespread accusations and the emergence of anti-witchcraft shrines and specialists. Nonetheless, it is worthy to note that the society by this period had opened up more and more to the emerging market economy. This was also an era of economic boom particularly in the cocoa and railway industries. The economic successes at the time occasioned major changes to traditional social structure and values including urbanisation and urbanism.²⁰ In the 1920s and 1930s, however, the colonial state was hit by considerable misfortunes including an influenza and venereal epidemic as well as blighting of the much cherished cocoa crops which situation led to anomie in society.²¹

By the mid-1940s the joy associated with the new political atmosphere had turned into one of uncertainty and disaffection especially among kinsmen.²² Police and the tribunal records provide evidence that the cocoa season of the early twentieth century became a period

¹⁸ See, for example, the account and plight a woman who was stripped naked as part of the witch-finding rituals in NAG ADM 11/1/886, “Statement of Amma Botchway,” n.d [but c. 1930], quoted in Allman and Parker, *Tongnaab*, 151.

¹⁹ National Archives of Ghana Accra, “Witchcraft-Persecution of Persons Accused of the Native Customs (Witch and Wizard Finding) Order-in-Council No. 28 of 1930,” ADM 11/1/886, (December 19, 1930); Gray, “Witches, Oracles, and Colonial Law,” 339, 359.

²⁰ K.A. Busia, *Report on a Social Survey of Sekondi-Takoradi* (London and Aylesbury: Hazell, Watson & Viney Ltd, 1950).

²¹ Jack R. Goody, “Anomie in Ashanti?,” *Africa* 27, no. 4 (1957): 356–63. For a discussion on cocoa production and the increased venereal disease, see Penelope A. Roberts, “The State and the Regulation of Marriage: Sefwi Wiawso (Ghana), 1900-40,” in *Women, State and Ideology: Studies from Africa and Asia*, ed. Haleh Afshar (Albany: State University of New York Press, 1987), 48, 62.

²² *Contra* Goody, “Anomie in Ashanti?”; T.C. McCaskie, “Anti-Witchcraft Cults in Asante: An Essay in the Social History of an African People,” *History in Africa* 8 (1981): 125–54.

of criminal activity including an increase in petty stealing.²³ There is, also, a significant correlation between the growth of the cocoa industry and an increase in liquor consumption and importation during the early decades of the twentieth century.²⁴ Considerably, during this period, the wealthy became insecure of their newly acquired position. Similarly, the poor, according to Field's study, thought that they have been bewitched hence their inability to catch up with the new socioeconomic milieu which claimed to provide equal opportunities for all. According to Field, drunkards, for example, often "make direct accusations of witchcraft and they always blame the witch for making them drunkards."²⁵

There is a general belief, according to the African philosopher, Kwame Gyekye that: "In times of wonder, in times when situations do not seem to be immediately comprehensible or explicable rationally,... people tend to ground causal explanations in supernaturalism or fantastic metaphysics."²⁶ In the face of social changes in the colonial state, many families sought refuge in the supernatural. In a sense, economic transition introduced new forms of social challenges that necessitated spiritual solutions hence the rise in anti-witchcraft shrines.

The colonial political regime was also met with new social challenges that needed spiritual interventions. Imported political systems undermined the authority of traditional leaders and the new dispensation gave power to the individual. In reality, the youth, however, were dislocated from any meaningful political organisation and participation. In the earlier political setup, the youth had at least participated in military expeditions to expand or consolidate their sovereign traditional state. The *nkwankwa* (youth, commoners) group, for example, were active and vocal in traditional decision-making processes. The colonial interlude, however, led to a dislocation of traditional political processes and structures. The period witnessed the emergence of anti-witchcraft shrines such as the *Aberewa* (old woman) shrine. First, this shrine became a prominent political weapon associated with the youth.²⁷ During this period, most of the shrines that rose up became famous and attracted many young devotees owing to the shrines' control over witch-spirits. As I explain later in the discussion

²³ Field, *Akim-Kotoku*, 174.

²⁴ Emmanuel Akyeampong, "The State and Alcohol Revenues: Promoting 'Economic Development' in Gold Coast/Ghana, 1919 to the Present," *Histoire Sociale/Social History* 27, no. 54 (November 1994): 393–411, especially at 397.

²⁵ Field, *Search for Security*, 156.

²⁶ Gyekye, *Tradition and Modernity*, 232–33.

²⁷ McCaskie, "Anti-Witchcraft Cults," 139.

on self-bewitchment, people, thus, consciously appropriated the spiritual force of the shrine to make sense of the new conditions in society.

Second, like the *Aberewa* shrine, many of the new religious movements appeared as channels of organised rejection of imposed religious, legal and political authorities. Some of the shrines enacted rigid legal norms for their adherents, failure of which often attracted swift executions. These shrines accused mission Christianity of corrupting the moral fibre of society by introducing a new doctrine that postpones judgement to the end time.²⁸ The laws of the famous *Tigare* shrine, for example, were patterned according to the Biblical Ten Commandments. But while the shrine sternly extolled adherents against “bad witchcraft” and stealing, among other sins, violations that frustrated the colonial order were looked with equanimity. Adherents who stole from colonial establishments or a foreign firm, for example, broke no law and attracted no punitive sanctions. Atiemo writes that: “On the face of it, one might question the morality of this provision; however, it is part of the genius of religion to provide outlets for the recovery of a community’s property lost through systematic exploitation.”²⁹

I use these two changes in society and their corresponding impacts as a frame of reference for understanding the recent child witchcraft occurrences. It is worth indicating that traditionally non-adults were originally thought as unable to become witches.³⁰ In recent times, nonetheless, children have been accused and held accountable for witchcraft. This, as I illustrate, is attributable in part to changing conceptions of agency. In times past, the few suspected child witches were believed to have acquired the spirit from adult members of the matriclan. They acquired it either in the womb, at birth, or after birth. Traditional birth attendants were mostly suspected to be the common purveyors of the spirit especially while assisting in delivery. Malevolent medicine men were also believed to be transmitters of the spirit or other diseases while the child was still in the womb. Common targets were mainly expectant mothers who publically exposed their bare breasts.

Recent studies in witchcraft have rather come up with significant patterns of accusations and occurrences which both cohere with and challenge dominant notions of witchcraft belief in children.³¹ These studies collectively reflect modern changes in society.

²⁸ Atiemo, *The Inculturation of Human Rights*, 105.

²⁹ Atiemo, *The Inculturation of Human Rights*, 104–5.

³⁰ Rattray, *Religion and Art in Ashanti*, 28.

³¹ Adinkrah, “Child Witch Hunts.”

3.2 Changing Conceptions of Child Witchcraft

In the wake of increasing impacts of globalisation and modernity, scholars have focused on the continual resilience of local values.³² The discussion above has painted a picture of how at each phase of Ghana's history, entrenched religious and customary ideals adapt to the prevailing social, economic, political and legal contexts. The following discussion specifically examines how religious, legal and political shifts conflate child witchcraft accusations and maltreatment in contemporary Ghana. Child witchcraft accusations, I contend, has the function of scapegoating. I examine this contention in light of various overlapping factors that cause, sustain and complicate the situation. The discussion illuminates how child witchcraft phenomenon feeds into tensions resulting from the various normative traditions.³³

Firstly, sociologically speaking, the image of the child in most of traditional African societies has changed enormously over the years. Robert Brian dates the rise of widespread beliefs in child-witches in Africa to the 1970s. He suggests that among the Bangwa of Cameroon accusations emerged during this period as a direct response to rapid social changes principally from the encounter with Christianity.³⁴ In Ghana, up until the late 1990s, child witchcraft hysteria was an unusual topic for discussion. In recent years, however, children have been diversely accused and have witnessed various forms of violence on suspicion of witchcraft.³⁵ One sociological reason for this is that anxieties, frustrations, insecurities and uncertainties associated with socioeconomic changes lead to violence and the transfer of anger.³⁶ Particularly after Emile Durkheim's influential work on suicide and the division of labour, social scientists continue to study the correlation between sudden changes in socioeconomic conditions and the associated feelings of alienation.

In the previous section, I pointed out that during periods of social transition and transformation in colonial Ghana, the anomic individual struggled to fit into the patterns of the new social structure but the demands of the old society, at the same time, constrained

³² Jonathan Joseph, *The Social in the Global: Social Theory, Governmentality and Global Politics* (Cambridge: Cambridge University Press, 2013).

³³ Karl Hanson and Roberta Ruggiero, "Child Witchcraft Allegations and Human Rights," Policy Department Briefing Paper (Brussels: European Parliament's Subcommittee on Human Rights, July 2013), 13.

³⁴ Robert Brain, "Child-Witches," in *Witchcraft Confessions and Accusations*, ed. Mary Douglas (London: Tavistock Publications Ltd, 1970).

³⁵ Adinkrah, "Child Witch Hunts."

³⁶ Edward Miguel, "Poverty and Witch Killing," *Review of Economic Studies* 72 (2005): 1153–72.

them. Similar patterns are observed in recent times with regard to how child witchcraft accusations and maltreatments have become a mode of accounting for competing demands of the old family life and the new socioeconomic realities. A young woman informant narrated the struggles she and her mother have been going through to secure a better life for her younger “witch” brother. The young boy has been giving them problems as far as city life and coping with it are concerned. The woman narrated her family’s struggle as:

We have tried everything we can to make life better for him [the boy]. After I started my national service, we used all my allowance to pay for his bail bond. A month later, when I visited home, I had to settle another debt my mum incurred because this wizard had crushed his friend’s motor bike on someone’s car. On the third month, I was in the bank collecting my allowance when my mother called me that he has been involved in another motor bike accident and has been admitted at the hospital. The bill was, again, exactly the same as my allowance... We sent him for prayers. He ran away from the prayer ground. When we came back home, he was in bed comfortably sleeping. What other evidence? He can do whatever he wants; we are tired of him... If he is the one “doing” [bewitching] himself, he can’t use my monies to pay for his nocturnal debts.

The logic here is that despite the changing society, children are expected to conform to certain patterns of behaviour and children whose attitudes and actions depart from the category the society has assigned them are more likely to be labelled as witches.

Secondly, a subtle correlation exists between changing legal and human rights realities and child witchcraft accusations. In the old traditional setup – which was a corporate society – Akan custom, for example, required the father to be liable for the raising of the child: taking care of, reprimanding, chastising or disciplining the child. While custom demands that the child’s mother’s brother is the one responsible for it, the father, in reality, takes most of the blame for the behaviour of his children. As Rattray notes, if a father refuses to “reprove naughty children, the neighbours will upbraid him and tell him he does not know how to bring up (*tete*) a family.”³⁷ This custom is also well noted by Mensah Sarbah, a premier Ghanaian legal expert, who argues that under Fanti customary law, the father is responsible for damages arising from the misconduct of his son (before his, the son’s, marriage) especially in matters of sexual relations.³⁸

With the changing contemporary realities, however, customary norms regarding children have been underemphasised. In the new liberal and individualist society, state legal law claims to give special privilege to children including child offenders. Under Section 1(2)

³⁷ Rattray, *Ashanti Law and Constitution*, 11.

³⁸ Sarbah, *Fanti Customary Laws*, 39, 45.

of the *Juvenile Justice Act*, 2003 (Act 653), for example, a juvenile³⁹ shall not be dealt with in a manner in which an adult would be, except under unique circumstances outlined under Section 17 of this Act. The reality is that the previously “adored small child has to suffer the trauma of growing into an object of contempt – even in the eyes of its father.”⁴⁰ To the extent that changing legal and human rights lead to changing conceptions of agency, at the popular level children are now held responsible for most of their actions the same way adults are.

Thirdly, there is a convincing idea that the reification of traditional values and the increasing influence of imported ideals have effects on child witchcraft. For example, on 1 September 2016, in a popular evening programme on Agyenkwa FM, a private local station, the Panelists made a correlation between fallen moral values and its impact on contemporary Ghanaian children.⁴¹ A Panelist argued that increasing influence of received legal and religious norms is a marker of recent untraditional behaviour of contemporary Ghanaian children. According to him, in times past, society would not condone with young women who got pregnant without going through the customary rituals such as the girl nobility rites. In those days, the woman and the man responsible for the pregnancy were banished from the community for bringing *musuo* (misfortune) into the community. The legitimacy and relevance of girls’ nobility rites in society⁴² has now been questioned by churchly and other laws. While the Panelist did not make a direct link between the reification of this religious-customary practice and recent child witchcraft, he like the rest of the panel, observed that the disregard for this custom and the traditional emphasis on marriage has had enormous effects on the kind of children who are born and raised in society.

There is the idea that the insistence on imported models of the rights of the child while extremely useful for children’s welfare, latently leads to scapegoating. An elderly informant, *Okomfoɔ* P specialised in settling cases of imprecations and other spiritual activities gave the correlation between modern insistence on child rights and child witchcraft occurrences thus:

When we were growing up, things were a bit different from now. Today when you alter a word, the child will alter two [i.e. will challenge you]. In the olden days, sometimes *nananom* [the elders] would use only their eyes to communicate with you and you knew what that meant

³⁹ Section 1(1) of the Act defines a juvenile as a person under eighteen years who is in conflict with the law.

⁴⁰ Field, *Search for Security*, 28.

⁴¹ “Aware Pa [prosperous marriage],” *Odo ne Asetena (love and circumstances of life)* (Techiman: Agyenkwa FM, September 1, 2016), <http://tunein.com/radio/Agyenkwa-Fm-Techiman-s273109/>.

⁴² Peter Sarpong, *Girls’ Nobility Rites in Ashanti* (Accra: Ghana Publishing Corporation, 1977).

[impending punishment]. But today teachers and even parents cannot cane children because they [the state?] encourage us to allow our children to voice their views. I think this is causing all kinds of problems... You see when we were growing up, our parents decided what we would do. Today, when you open your machine [radio], you hear all kinds of stories, children engaged in various modes of occult in order to get rich. They go for witchcraft in order to get what they want.⁴³

Here, we see a perception of how increasing insistence of child rights is linked to witchcraft in society. As An-Na'im has noted, in seeking to advocate for the rights of the child, any argument that is perceived as inconsistent with the local people's culture and which is not appreciated as relevant to their needs and expectations is bound to face oppositions and repudiations.⁴⁴ State and international human rights laws on the child are thus blamed as facilitating the changing conception of the child. The child is now seen as an independent individual engaging in social struggles. Okomfoɔ P's view is not peculiar to postcolonial states like Ghana. The well-cited study by Jean La Fontaine noted the frustrations that parents of immigrant children in Britain go through. These parents frequently clash with the police and the British legal system as the law does not allow them to use proscribed customary sanctions against their suspected child witches.⁴⁵

A single mother of three whose "badly behaved" teenage daughter has been giving her problems lamented the inability of parents to discipline their children the way they desire. She narrated her story thus:

Look, because of this badly behaved girl, every day I leave home very early in the morning and come back late. What haven't I done for her? I sold all my cloths to pay for her education. I sent her to so many schools [three different high schools] to be able to secure a better future for her. In the end she came back from the boarding school pregnant... She is different. None of my children is like that. I don't know where this one comes from... As I said, this witch came to my life to ruin all my investment.⁴⁶

She ended her lamentation by asking "what can you do? You cannot kill her." Her concern permits a logical conclusion that a severe punitive sanction – literally killing her, as it is locally said – would have awaited the daughter but for the constraints of imposed state law. While traditional law obviously does not allow arbitrary sanction of the child, it is

⁴³ Interview of 25 February 2016.

⁴⁴ Abdullahi Ahmed An-Na'im, "Cultural Transformation and Normative Consensus on the Best Interests of the Child," *International Journal of Law and the Family* 8 (1994): 62–81.

⁴⁵ Jean La Fontaine, "Child Witches in London: Tradition and Change in Religious Practice and Belief," in *The Devil's Children: From Spirit Possession to Witchcraft: New Allegations That Affect Children*, ed. Jean La Fontaine (Farnham and Burlington: Ashgate Publishing Limited, 2009), 123.

⁴⁶ Interview with Auntie Abena, Techiman, March 8, 2015.

understandable why the woman would be aggrieved with the new state considering that it has led to new demands from children while limiting the old parental sanctioning power. Labelling the daughter as a witch becomes a soothing mechanism for her to cope with the human rights demands of her children.

A fourth – and closely related to the above – reason why religious imagination would be invoked to accuse children is the changing economic demands of the new society. In the face of the changing legal demands and protection of the child, children from poor background have been noted to be direct victims when local economies open up to the forces of global market.⁴⁷ In most transitional societies, both local and national actors implement partial rights of the child owing to resource constraints. To be able to meet provisions in domestic and international human rights of the child such as basic education and health, many Ghanaian families and guardians forcibly engage children in different types of legal and illegal economic activities.⁴⁸ Many of these activities were previously outside the domain of children. While in the previous society children were used to support family needs, in recent times, in many families, children are the main source of family income.

Article 28 of the Constitution outlines the basic rights of the child and provides that in all cases, the interests of the child shall be paramount. As the condition of the woman just cited also shows, to be able to balance the competing demands of traditional parenting and statutory responsibilities of parents, most parents have to absent themselves from home in order to work. As such, their children are left in an unsupervised social space which is traditionally held to be populated by manipulative evil forces. In the example of the radio programme just cited above, one of the Panelists reiterated the prevalent notion in traditional Ghanaian society that because parents in recent times do not have time for their children, these children are now raised by modern media such as the television, the radio, and the computer. Traditional society holds the view that because children possess weaker *sunsum* (spirit) than adults, they easily become targets of bewitchment by modernising forces of evil and people who come into contact with children.

⁴⁷ Save the Child UK, “Globalisation and Children’s Rights: What Role for the Private Sector?” (London: Save the Children UK, 2002), 7.

⁴⁸ Peace Tetteh, “Child Domestic Labour in (Accra) Ghana: A Child and Gender Rights Issue?” *International Journal of Children’s Rights* 19, no. 2 (2011): 217–32. See Bureau of International Labor Affairs, “2013 Findings on the Worst Forms of Child Labor Select a Country- Ghana.” (United States Department of Labor, 2013), <http://www.dol.gov/ilab/reports/child-labor/ghana.htm>.

Accusations have implications on children including abusive maltreatment. It is not an uncommon practice for Ghanaian families to warn children from accepting gifts especially from unknown people because of the fear of bewitchment. There are cases where parents have maltreated their children for accepting gifts especially food from strangers. In a recent media publication, for example, a two-year old boy was reported to risk losing his right hand after suffering severe burns inflicted on him by a couple for eating in a neighbour's house. The couple were reportedly said to have used an electric iron to burn the little boy's hand after labelling him as a witch.⁴⁹ According to Filip de Boeck, in the face of the ever changing economic realities, labelling children as witches and sending them into the streets limit the burden of feeding more mouths than a family can sustain. He describes such "strategic" means of shrinking the family size as a form of *a posterior* birth control.⁵⁰ But it will be too simplistic, however, to argue that in Ghana and elsewhere all accused children end up becoming victims of a posterior "strategy" of easing economic pressures. Without a doubt, most parents prefer sending such children for exorcism, also known as "deliverance" in pentecostal circles. This spiritual alternative has also generated a lot controversies which I shall consider later in this chapter.

The economic and psychological stress associated with meeting the new demands of parents have led to children whose behaviour does not conform to the social values and standards to be labelled as witches. For example, the Ghanaian media once reported an auto-mechanic in a major city who was accused of "roasting" the feet of his two sons, aged seven and nine years-old. This was after the father accused them of witchcraft and the cause of his financial woes and unsuccessful business. The man was said to have dreamed of the boys flying, hence the belief that they were actually wizards although the children denied this accusation. The said punishment was believed to disable the accused child wizards from engaging in their alleged nefarious nocturnal flights.⁵¹ This and other recent occurrences of child witchcraft are, to be sure, a manifestation of modern realities. This phenomenon is also a departure from old beliefs in the existence of social reality that put emphasis on adults.

⁴⁹ Erastu Asare Donkor, "Fingers of Boy, 2 Burnt for Eating at Neighbours House," *Adomonline.com*, September 28, 2015, <http://ghana-news.adomonline.com/news/2015/September-28th/fingers-of-boy-2-burnt-for-eating-at-neighbours-house.php>.

⁵⁰ Filip de Boeck, "At Risk, as Risk: Abandonment and Care in a World of Spiritual Insecurity," in *The Devil's Children: From Spirit Possession to Witchcraft: New Allegations That Affect Children*, ed. Jean La Fontaine (Farnham and Burlington: Ashgate Publishing Limited, 2009), 135.

⁵¹ Victoria Odoi, "Father 'Roasts' Feet of Sons for Flying at Night," *Daily Graphic*, July 26, 2006, 6.

Thus child witchcraft phenomenon cannot be understood in isolation from economic changes in society that have led to a change in the very concept of childhood.⁵²

Fifthly, in the face of soaring interpersonal relations especially among close relatives, people diagnose their misfortune in witchcraft. A woman narrated how her thirteen year old niece who stays with her has bewitched her two children. According to her, since the young girl came to live with them, her own children's academic performances began to slow down as the hitherto academically poor girl started improving.⁵³ Witchcraft narratives thus become the interpretative framework through which people accept academic failures and also justifies every decision to avoid close relations. As Field has observed, in times of sudden changes in society, even the "neurotic and ne'er-do-well school boy who failed in his examination" attributes his plight to his envious, illiterate close relations who through witchcraft had damaged his brain rendering him academically weak.⁵⁴

The significance of all these factors is that child witchcraft narratives embody people's disappointment in the postcolonial nation-state and the unfulfilled promises of global prosperity. Youth in particular often become the direct victims of the contradictions of postcolonial life. While they disassociate themselves from the old social life, they have equally become disenchanted with the promises of postcolonial return.⁵⁵ Working but unsuccessful people, time and again, blame witches as diverters of the flow of production. Under such conditions, close relations, particularly more vulnerable children become targets of suspicion and accusations. Young literates who have difficulty balancing traditional social demands with socioeconomic struggles employ the politics of witchcraft accusations as a channel of managing social realities. In the face of increasing graduate unemployment, many young people are convinced that an "envious malice is the cause of their failure."⁵⁶ A young informant narrated her ordeal to me, relevant portions of which warrant a long quotation.

⁵² Jean La Fontaine, ed., *The Devil's Children: From Spirit Possession to Witchcraft: New Allegations That Affect Children* (Farnham and Burlington: Ashgate Publishing Limited, 2009). See also Jean La Fontaine, *Speak of the Devil: Tales of Satanic Abuse in Contemporary England* (Cambridge: Cambridge University Press, 1998).

⁵³ Interview with Yeboaa, Techiman, January 23, 2016. For a similar story, see "Girl Dumped in Witch Camp for Being Brilliant," *The Ghanaian Times*, April 2, 2012, <http://news.peacefmonline.com/pages/social/201204/105445.php?page=2&storyid=100&>.

⁵⁴ Field, *Akim-Kotoku*, 173.

⁵⁵ Jean Comaroff and John L. Comaroff, "Occult Economies and the Violence of Abstraction: Notes from the South African Postcolony," *American Ethnologist* 26, no. 2 (May 1999): 279–303, especially at 284.

⁵⁶ Field, *Search for Security*, 87.

Although I am gainfully employed, I had been in this situation for a long time after graduating from the university. I had nearly given up in life when A came and introduced to me this “business” [a Microfinance Company, Ltd] and told me I would get 55% interest of any amount I deposit there within two months. I inquired and realised that the company was a genuine one. I hurriedly went to the B Bank to secure a loan of GH¢10,000 [i.e., US\$3,200 at the time] and deposited it there...

I have always suspected my auntie’s daughter whom I was staying with; we all know she is a witch. I decided to keep it to myself. But two weeks before the money would mature, I don’t know what happened to me; I told her during our normal conversations. I regret doing that ‘cos I realised her response was that of envy... of my impending financial progress. She asked me to pray that people don’t run away with my money as they used to do. But I told her this company has been in existence for over two years and that many people have benefited from it. Since that time, she kept asking me if I have heard from the company... Suddenly her witchcraft worked. Three days before my money was due for collection, we were hit with the sad news that this company has been shut down by the government.⁵⁷

This account supports the link between conceptions of development and the manipulative actions of witches.⁵⁸ Confronted with botched promises of scam financial institutions or what the Comaroffs refer to as “economies of the occult,”⁵⁹ witchcraft becomes a convenient mode of managing disappointment. In the face of weak state economy and increasing scam activities, society often holds the perception that witches have the potential of intercepting people’s accumulated wealth.⁶⁰ Witches are blamed for siphoning off “the invisible essence of money so that the victim meets financial losses and the spoiler financial windfalls.”⁶¹ But, of course, the young woman’s situation exemplifies a dangerously naïve understanding of interest rates and investments. Her situation, like others mentioned, very often leads to scapegoating that is, holding an external agent – in this case, her younger cousin – responsible for one’s lack of financial diligence becomes an easier approach to pacifying one’s economic confusion.

⁵⁷ The said closure was indeed a 90 day moratorium placed on the company by the Bank of Ghana because, among other reasons, the company was: “Carrying on operations in a manner which appears to the Bank of Ghana to be contrary or detrimental to the interest of its depositors or the public [Section 13(1) (f) of Act 673]. See BG/GOV/SEC/2015/05. (Notice of Moratorium on the Operations of DKM Microfinance Company Limited), May 7, 2015.

⁵⁸ James Howard Smith, *Bewitching Development: Witchcraft and the Reinvention of Development in Neoliberal Kenya* (Chicago and London: The University of Chicago Press, 2008), xii–xiii.

⁵⁹ Comaroff and Comaroff, “Occult Economies and the Violence of Abstraction.”

⁶⁰ Jane Parish, “From the Body to the Wallet: Conceptualizing Akan Witchcraft at Home and Abroad,” *The Journal of the Royal Anthropological Institute* 6, no. 3 (September 2000): 487–500.

⁶¹ Margaret J. Field, “Some New Shrines of the Gold Coast and Their Significance,” *Africa: Journal of the International African Institute* 13, no. 2 (April 1940): 139–49, at 141.

Beliefs in witchcraft also become a continent zone of intersection between the local and the global.⁶² In the old society bewitchment was done to members of the kin-group but in contemporary Ghana, witchcraft is no longer a “family business.”⁶³ There have been accounts of people accusing non-relatives of witchcraft. The story of an informant, a woman trader and her maid gives insight into this. The woman whose neighbour had died years earlier recounted that she decided to take a twelve year old daughter of the deceased to stay with her in the national capital. The young girl was to assist the woman in her trading enterprise. In return, the young girl would get some level of education and comparable better life. According to the woman, at first, the young girl was obedient and hardworking. She was also liked by all the neighbours and her customers. A few years later, however, the girl started exhibiting signs of unusual behaviour. Importantly, this also coincided with the woman’s business slowing down. According to the woman, she once dreamed that the young girl was taking all the proceeds from the day’s sales to an unidentified agent in an unknown destination. She informed her pastor about the dream and during one prayer session, it was revealed to the pastor that the girl was indeed a witch and the author of her own father’s death years ago. She was, thus, responsible for the gradual collapse of the woman’s trade.

When the pastor confronted the girl, she reputedly admitted that she always had strange emotional experiences anytime she wore a necklace her schoolmate had given her as a gift. Like all witchcraft accusations, this qualified as self-confessed evidence.⁶⁴ However, the girl denied being responsible for the death of her father. The woman said she did not maltreat the child and neither wanted her to be maltreated by anyone. The girl confirmed that she has not had any form of physical abuse although attitudes towards her had changed and she had also experienced frequent instances of insinuations and name-calling. The woman admitted that the girl was mocked and shunned at school and at her shop hence the need to send her back to her widowed mother in the village, thus losing her educational and economic opportunities.

⁶² Peter Geschiere, “Globalization and the Power of Indeterminate Meaning: Witchcraft and Spirit Cults in Africa and East Asia,” *Development and Change* 29 (1998): 811–37, especially at 816. See also Comaroff and Comaroff, “Occult Economies and the Violence of Abstraction,” 284.

⁶³ Diane Purkiss, *The Witch in History: Early Modern and Twentieth-Century Representation* (London and New York: Routledge, 1996), 146.

⁶⁴ See, for example, Cotton Mather, *On Witchcraft: On Being the Wonders of the Invisible World* (New York: Bell Publishing Company, 1692).

The cases cited in this section typify how globalisation, economic individualism and other factors that lead to the encroachment on individual and familial values. In the face of the confusion associated with this, religious realities that include witchcraft is invoked to accuse children as witches so as to manage the situation. But these situations also give the surprising impression that the people accused of witchcraft are merely passive participants of the changing realities of the postcolonial nation-states. What is significant about these modern adaptations of witchcraft beliefs, often ignored in scholarly discussions, is how accused children themselves believe that their conditions are indeed a means of finding a space in contemporary society.

3.3 Self-Bewitchment

Up to this point, we have established that children accused of witchcraft are passive participants in the struggles of contemporary Ghana. The problem, however, is that the cases analysed above take agency away from the child witch, thereby giving an insufficient narration about witchcraft and the changing realities of society. In this section, I examine the second proposition of this chapter which argues that disenchanted children resort to religious imagination to recreate and regain their lost identity in the new society. I use self-bewitchment to interrogate how witchcraft can also be used to respond to the changing realities of society. By self-bewitchment, I do not imply self-spellbinding in terms of the victims casting a spell on themselves. Rather I use bewitchment in the sense of becoming a witch, that is, bewitchment as a way of young people creating space for themselves. I establish this by delineating the extent to which the belief in witchcraft spirit is deployed as a means of facilitating acceptance into a changing society. I propose a victim-centred approach, which calls for the need to pay attention to the witch's self-confession, what witchcraft means to the witch and how they respond to a changing society. Self-bewitchment, as I show, enables a redistribution of power in society. I hang the discussion in this section on the concept of agency.

As noted, the accounts in the previous section give the impression that child witches are products of social, economic, political and legal determinants already discussed. But central to that discussion is the assumption that child witches are simply, in the Foucauldian sense, subjects who are "docile bodies" (i.e. they are "effects" or products) of discourse. As sheer products, as Foucault would put it, they can be and are manipulated, shaped, or trained

and in the context of this discussion, abused by the factors already mentioned.⁶⁵ In fact, in the popular imaginations of some pentecostal Christians, there is the belief in what Iyke Nathan Uzorma has referred to as the “blind witch” who he explains is “one who is nothing but a mere playground for witchcrafts [sic] experiments and manipulations.”⁶⁶ Blind witches, he maintains, do not know of the spirit they possess, neither do they operate consciously as witches. As I argue, however, in the discourse of witchcraft, popular and scholarly views such as these rob child witches of the agency needed for social, economic, political, religious and cultural actions. Discussions that overlook the politics of agency and identity also ignore how witchcraft becomes to the child an enabling spirit or means of self-awareness. It is often argued that if subjects and identities are a product of the social and the cultural, then as Chris Barker wonders, “how can we conceive of persons as able to act and engender change in the social order?”⁶⁷ In other words, if subjects (child witches) are mere “products” rather than “producers,” then to what extent “shall we account for the human agency required for a cultural politics of change?”⁶⁸

By carefully examining stories of child witches, we get the logic that these child witches are active, creative and independent responders to social events. This claim raises the important question of choice and determination which are crucial in the discussion of agency. But as Barker has pointed out, when people engage in a particular course of action rather than the other, it does not mean that they have chosen *per se*. For Barker, they have simply acted.⁶⁹ I draw a similar pattern here. To employ witch spirit rather than capitulating as a course of action does not mean that the child witch has chosen *per se*. The child has used religious imaginations to simply respond to external stimuli or influences around them.

As mentioned before, in Akan cosmology, not all bewitched people are products of external forces. Instead, people can be authors of their own bewitchment. The self-bewitched, loosely translated in popular Akan parlance as “those doing themselves,” very often have less

⁶⁵ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1977), 136.

⁶⁶ Iyke Nathan Uzorma, *Occult Grand Master: Now in Christ* (Benin City: National Library of Nigeria, 1994), 43.

⁶⁷ Chris Barker, *Cultural Studies: Theory and Practice*, 3rd edition (Los Angeles: Sage Publications, 2008), 231–32.

⁶⁸ Barker, *Cultural Studies*, 232.

⁶⁹ Barker, *Cultural Studies*, 235.

public sympathy as compared to passive witches – those who have little or no control over their witchcraft conditions as discussed in the previous section.

The paucity of scholarly interest in self-bewitchment perhaps tacitly lends support for psychoanalysts' position that self-confessions of witchcraft are mainly a result of neurotic disorder resulting from severe depression.⁷⁰ Concepts such as "false memory syndrome" multiple personality disorder or dissociative identity disorder which all primarily assume a mental disorder have been used to analyse "weird beliefs".⁷¹ These analytical tools often permit the need to discount unreliability of the witches' narrative. According to Field's celebrated research on ethno-psychiatric studies of witchcraft in Ghana, delusory ideas of guilt regularly characterise close-knit societies that have been opened up more and more to the forces of modernisation.⁷² Her *Search for Security* gives further authority to how self-confessed witches are involuntarily detached from their own activities as witches. Ethno-psychiatric interpretations such as these also tell us more about the depth to which Ghanaian postcolonial interruptions of familial values, the ongoing decrease in kinship ties and the disintegration of the natural parent-child bonds to contemporary realities have all contributed to accusations of witchcraft. These interpretations, nevertheless, give only a partial account of the story of self-confessed witches. They rather render the self-bewitched simply as a passive participant fit to be "manipulated, shaped, [or] trained" in the changing dynamics of the new society.

Relying on psychoanalytic or ethno-psychiatric interpretations denies what people believe to be the pervading reality of witchcraft. It also underestimates how the individual mobilises witch spirits as an alternative symbol of protection and freedom from the malcontents of the new society. By proposing the need to pay attention to self-bewitchment, however, I do not mean to support or prove the reality of the existence of witchcraft. Rather, I seek to highlight the agentic valence of witchcraft, the way that witchcraft is consciously and actively used to react to postcolonial Ghanaian conditions which I have earlier on said lead to scapegoating and punishing them as witches.

⁷⁰ For a good account of this phenomenon, see Peter Charles Hoffer, *The Devil's Disciples: Makers of The Salem Witchcraft Trials* (Baltimore and London: The John Hopkins University Press, 1996).

⁷¹ Rosalind Theresa Waterhouse, "Satanic Abuse, False Memories, Weird Beliefs and Moral Panics: Anatomy of a 24-Year Investigation" (Unpublished: PhD Thesis, City University London, 2014).

⁷² Field, *Search for Security*. The Basel missionary, Rev. Hans Debrunner, also described it as a "neurotic reaction" to modern changes. Hans W. Debrunner, *Witchcraft in Ghana: A Study of the Belief in Destructive Witches and Its Effects on the Akan Tribes* (Kumasi: Presbyterian Books Depot, 1959), 65.

From information gathered so far, various reasons can be said to account for why children employ witchcraft. Importantly, witch spirit aids in the formation of the child's identity which has been lost to the new and uncertain society. For example, the story of a ten year old boy as narrated by an informant challenges the paradigmatic assumption and narrative of witchcraft as described in the previous section. According to the informant, she witnessed the plight of a ten year old boy whose grandmother has brought him to a deliverance session at a place near Sunyani.⁷³ During the session, it was revealed to the officiating pastor-prophet that the little boy was a witch. She narrated that both the boy and his grandmother admitted this accusation explaining why the boy had been brought to the place after their visit to numerous prayer centres to exorcise him proved unsuccessful. However, in the course of the deliverance, the boy refused to open his mouth to receive the "anointing oil" as part of the ritual. The boy, according to my informant, maintained that casting the spirit out of him would render him spiritually incapacitated in the presence of his colleagues. For this little boy, witchcraft spirit offers the foundation through which he can shape and maintain his identity. Such identity creation and recreation represent a compromise between the child witch's self-understanding of the world and the categories developed by society. As a result, I propose, narratives about the witch must be engaged within the context of agency, which is the power of the child witch to take control of their own life and story.

Another reason why children employ witchcraft is a result of intergenerational tensions which are associated with the new society. In discussing the "origin" of child witchcraft in recent years, we realised how *Okomfoɔ* P, an elderly informant and ritual specialist, blamed tensions between the younger and the older generations. Elsewhere too, Peter Geschiere has noted that in the 1970s child witchcraft accusations became prominent among the Maka of south eastern Cameroon although these were of interstice importance, lasting for two to three years.⁷⁴ In Geschiere's work, we get a sense of the type of witchcraft activity which is a function of intergenerational politics. The emergence of child-witches during this era was a counter-hegemonic response to the earlier social and political structures and leadership. One of the boys, Geschiere records, complains of his parents' failure to feed

⁷³ Interview with Akua Mama, March 17, 2015.

⁷⁴ Peter Geschiere, "Child Witches against the Authority of Their Elders: Anthropology and History in the Analysis of Witchcraft Beliefs of the Maka (Southeastern Cameroon)," in *Man, Meaning and History: Essays in Honour of H.G. Schulte Nordholt*, ed. R. Schefold, J.W. Schoorl, and T. Tennekes (The Hague: Verhandeligen van het koninklijk Instituut voor Taal-Land-en Volkenkunde, 1980), 268–99.

him with enough meat.⁷⁵ A retired educationist, confirming tensions between the older and the younger generation informs me that there were three occasions whereby as a head teacher, cases of self-confessions came before her during school time. On one occasion, she says, an eleven year old primary five pupil admitted to being the cause of the chronic sickness of his father who regularly beat him anytime he did something wrong. On a different occasion, she continues, another student admitted to being the cause of her own mother's business collapse because the mother was always harsh on her.

Witchcraft narratives, thus, present us with a complex symbolic discourse on domination and power.⁷⁶ With children experiencing increasing societal marginalisation and domestic injustices, witchcraft becomes spiritual capital that can be drawn upon to restore their lost identity in society. For such children, witchcraft is a symbolic weapon of rebellion against both domestic and societal leadership whose authority has already been weakened by imposed legal norms, human rights, and the money economy, among others. But as these stories show, parental neglect and abuse are also a major factor leading children to resort to witchcraft.

In addition, disenfranchised children particularly teenagers find witchcraft as a favourable niche in their self-exploration. There are, in fact, cases of children confessing to being engaged in witchcraft activities and operations for good or for ill. For example, in a popular weekly TV programme *Asumasem* (hidden things), self-confessed child witches are seen giving accounts of how they acquired the spirit and the kinds of spiritual violence and harm they have caused to their targets. In the 11 March 2015 edition of this programme, titled *Witch Hunters*, all the seven children featured in the programme admitted to spiritually causing diverse harms to their families including financial loss to parents, destruction to grandparent's cocoa farm, destruction of step mother's business, swapping their brains with those of their fellow class-mates, etc.⁷⁷ For these children, witchcraft is to them a new form of spirituality that they feel speaks to them and helps them attain their needs.⁷⁸ Disenchanted children in society, as noted, use witchcraft as a symbolic tool of asserting their self-worth.

⁷⁵ Geschiere, "Child Witches against the Authority of Their Elders."

⁷⁶ Isak Niehaus, Eliazaar Mohlala, and Kally Shokane, *Witchcraft, Power and Politics: Exploring the Occult in the South African Lowveld* (London: Pluto Press, 2001), 81.

⁷⁷ "The Witch Hunter," *Asumasem* (Accra: Adom TV, March 11, 2015), <https://www.youtube.com/watch?v=3rf7a6mNuOg>.

⁷⁸ Helen A Berger and Douglas Ezzy, *Teenage Witches: Magical Youth and the Search for the Self* (New Brunswick and London: Rutgers University Press, 2007), xvii.

By analysing the detailed accounts of these children and those cited earlier, we can reasonably agree with Javier Aguilar Molina that to the neglected, socioculturally marginalised and politically and economically disenfranchised child, witchcraft ushers them into a supposed luxurious second world – of witchcraft.⁷⁹ Self-bewitched children believe that the second world is a realm where the earthly poor, deprived and neglected child is in control, adored, rich and worshipped. They believe that the normative orders and authorities of that imaginary spiritual world are relaxed and differ from those of the real world. Young children in that world are thought to marry and the forsaken in the real world can be crowned as a leader of the witches' league. A young woman whose childhood story I am well familiar with recounts how her reputation as a self-confessed child witch in a small community she grew up with helped her achieved greater feats. When I first met her in 2003, this attractive and daring little girl was “feared” by members of her community except her grandmother and her father. Societal members largely stayed clear from her company due to her self-bewitchment. Her status as a child witch was actually one of the reasons for her parent's marital break-up at a very tender age. She recounts that her mother abandoned her with her father and left them as the mother did not want to have anything to do with her until she also grew up as a woman. In those days she was described as rebellious and recalcitrant and even as a child would always like to be in the company of “big people,” hence the confirmation of her own admission. According to her, even though in those days she sometimes felt uncomfortable especially as people unfairly accused her of certain misfortunes, it also helped her avoid some abuses. “I was not only the queen of the witches' league, but even in the real life, no one could bully me because of the belief that I was actually a witch,” she remembers.

This woman's childhood story feeds into the notion that the socially marginalised and abandoned child believes that in the second world, resistance to existing social order gains one promotion. Consequently, child witches are often viewed as rebellious, repudiating and constantly violating social norms, resisting parental control or disturbing familial harmony.⁸⁰ In many communities, extreme insolence towards elders is interpreted within the framework of the influence of witchcraft powers. In diaspora Europe, La Fontaine notes that disrespectful African immigrant children are mostly targets of witchcraft accusations. In the

⁷⁹ Javier Aguilar Molina, “The Invention of Child Witches in the Democratic Republic of Congo: Social Cleansing, Religious Commerce and the Difficulties of Being a Parent in an Urban Culture” (Save the Children UK, 2005), 11.

⁸⁰ Molina, “The Invention of Child Witches,” 12–13; La Fontaine, “Child Witches in London,” 123.

story of the woman just cited, we just saw how her community members accused her of crossing the cultural border line between a child and an elder. As a daring little girl she was accused of being insolent, retorting back at elderly people thereby breaking traditional protocol and etiquette regarding elderly, important people.

Self-bewitchment must also be seen as a symbolic violence. It is a spiritual resistance aimed at restoring traditional family values such as care for children – that have been lost to the postmodern society – to its original place. Thus deploying the beliefs and practices which had been undermined by society, self-bewitched children create a space in society. But because the old family values are still resilient and continue to exercise influence in society, children seen as a threat to these values are often punished or pushed out of the family. Such children are also, in large part, viewed as a threat to societal norms.

The larger implication is that because of the belief in the pervasive negative effects of witches in society, child witches often experience not only family sanctions but also societal exclusion for the survival of the family and the society. My friendly informant cited above had to grow up with her paternal grandmother as her mother abandoned her throughout her youthful years because of the accusations of witchcraft. But, as noted too, because of state and non-state legal orders and influence, not all children are maltreated by family members or expelled from the confines of family support. However, most self-bewitchers, “those doing themselves,” receive less public or societal sympathy when needed as they are believed to be designers of their own situations.

3.4.1 State and Non-State Legal Systems on Witchcraft

At the moment, Ghana does not have any specific modern law that directly deals with issues of witchcraft accusations. But there are considerable constitutional and statutory laws that are extended to deal with this phenomenon. The protection of the rights of the child is part of Ghana’s responsibility under domestic and international human rights law. In 1990, Ghana became the first state party to sign and also ratify the *UN Convention on the Rights of the Child* (the Child Convention). Regional and national jurisprudence have been consistent with the Child Convention in seeking the welfare of the child. At the regional level, Ghana has since 1999 been a signatory to The African Charter on the Rights and Welfare of the Child. Appropriate domestic legislations include the *Children’s Act, 1998* (Act 560), *The Juvenile Justice Act, 2003* (Act 653), and *The Human Trafficking Act, 2005* (Act 694). Non-state actors and the Commission for Human Rights and Administrative Justice (the CHRAJ) have also been involved in salvaging the plight of people accused of witchcraft. The Ministry of

Gender, Children and Social Protection (formerly Ministry of Women and Children Affairs) also has oversight responsibilities of the welfare of the child. At the same time, however, the practical enforcement of all these “universally” cherished dream values has been problematic. Proposals in these legal tools are often more of possibilities rather than actuality.

Article 28 (3) of the Constitution states that “A child shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment.” Witchcraft accusations and maltreatments, to be sure are a significant example. The Criminal Code also prohibits undesirable customs or practices that are injurious to the individual and are socially harmful. Section 88A of the Criminal Code defines cruel custom or practices to include different kinds of assault and battery (explained in Sections 85-88). Section 14 of the Code which deals with issues relating to consent, specifically mentions cruelly beating a child as a crime. It is a crime, too, under Section 314A, to subject any person to customary servitude. Moreover, Section 315 deals with unlawful ordeal. Its specifically states that: “(1) The trial by the ordeal of sasswood, eserepbean, or other poison, boiling oil, fire, immersion in water, or exposure to the attacks of crocodiles or other wild animals, or by any ordeal which is likely to result in the death of or bodily injury to any party to the proceeding is unlawful. (2) Any person who directs or controls or presides at any trial by ordeal which is unlawful shall be guilty of second degree felony.”

In some societies, however, accused children undergo various forms of torture to extract confession. In October 2009, for example, the story of a seven year old boy garnered media attention when his 44 year old aunty was arrested in the suburb of the national capital for systematically torturing the boy including feeding him with human urine and faeces in order to coerce him into confessing that he has used witch powers to make his grandma persistently sick.⁸¹

These notwithstanding, enforcement of these laws is difficult owing to diverse factors. Because witchcraft accusations form part of the realm of religious and metaphysical beliefs and practices, they fall outside the interest and competence of the civil courts.⁸² Confessing witches’ claims have no legal validity in court. Although there have been isolated instances where issues of witchcraft have been dealt with by the courts, state actors become reluctant to

⁸¹ Linda Tenyah, “Woman Feeds Boy with Shit, Urine,” *Daily Guide*, October 3, 2009.

⁸² See E.K. Quashigah, “Religion, Democracy and Civil Society: The Case of ‘witches’ in Ghana,” *The Witchcraft & Human Rights Information Network*, April 25, 2013, <http://www.iclrs.org/content/events/26/510.pdf>.

deal with such cases. While this may suggest a good demonstration of the State distancing itself from religious affairs, analysis of the realities also reveals the other dimension of state's lack of interest in witchcraft activities. In a society which we have said beliefs in witchcraft cuts across diverse profession and educational background, the question that may be posed is how many law enforcers are willing to handle such spiritual cases, especially for fear of serious anti-social reprisals? Enforcement of the law faces major challenge for the State. Besides, there is lack of political will. For example, many Ghanaians are not oblivious of their rights especially if they are abused by religious ritual specialists. Many families know they can report for the abuser to be arrested.⁸³ But the real challenge is that to what extent are law enforcement officers ready to arrest and prosecute the accused ritual specialists?

An argument is also made that if the law becomes responsive and punishes offenders, the popular reaction would be that the supports this antisocial behaviour.⁸⁴ Despite the transition from the old society and its values to the new, political actors and law enforcers are all people who live in the local community. They have seen and heard stories of the baneful activities of evil forces. They are also familiar with the stories of the impact of these spiritual forces on people or community.⁸⁵ And so even if they outwardly deny its existence, deep within them they are aware of its effects on others or themselves.⁸⁶ A prominent traditional religious specialist, for example, narrated how he once had a case and was reported to the police. According to him, he warned the police officer in charge of prosecuting the case about the dangers of processing the case for court but the law enforcer defied this warning. The next day, the policeman was reportedly found to have hanged himself.⁸⁷ Such incidences, in the minds of many, affirm the supposed spiritual prowess of ritual specialists. Stories such as this set a deadly deterrence to other law enforcers who might want to challenge spiritual authorities who are found to have violated accused witches. The end result is that contemporary state is often "confronted with a moral and political deficit which hinders a

⁸³ "Fetish Priest Arrested for Murder," *Ghanaian Times*, February 16, 2016.

⁸⁴ C. Clifton Roberts, "Witchcraft and Colonial Legislation," *Africa: Journal of the International African Institute* 8, no. 4 (October 1935): 489.

⁸⁵ For details on elite manipulation of witchcraft belief, see Cyprian F. Fisiy and Michael Rowlands, "Sorcery and Law in Modern Cameroon," *Culture and History* 6 (1989): 63–84.

⁸⁶ Neal, *Ju-Ju in My Life*.

⁸⁷ Interview conducted on January 23, 2015. For details of the death of the policeman which received national attention, see "Techiman MTTU Commander Commits Suicide," *Ghana Business News*, January 26, 2011, <https://www.ghanabusinessnews.com/2011/01/26/techiman-mttu-commander-commits-suicide/>.

possible constructive collaboration between customary law and the legal protection of children and adults who are accused of witchcraft.”⁸⁸

Experience from Ghana and elsewhere supports part of the claims of this thesis that most of the religious and customary challenges cannot be comprehensively solved through state legal interventions alone. Rather, these require wider legal and non-legal cooperation and participatory measures.⁸⁹ In South Africa, the Witchcraft Suppression Act of 1957 (as amended in 1970 and 1999), for example, has been criticised for its inability to meet its intended goal of curbing witchcraft accusations but rather contributing to increase in the number of cases of vigilantism against accused witches.⁹⁰

Some proposals have been made that in cases of competing claims over state and non-state legal orders, rights and culture, universalism and relativism, the state must allow group members to address the issue themselves. But the challenge is that, like all other legal proposals, there are bound to be loopholes. “Rushing to replace state systems that enjoy little legitimacy with non-state mechanisms (or even vice versa) may therefore make little difference if analyses of ‘choices’ between state and non-state legal orders leave issues of power unexamined.”⁹¹ Lessons from previous legislations on some customary practices have shown that legal aggression alone has not led to much accomplishments. While law is useful in addressing behaviour, it does not change the attitudes and values that produce the behaviour. And it becomes problematic when such behaviours are influenced by religion and custom. For example, although the Criminal Code outlaws customary servitude such as the *trokosi* custom whereby young females are sent to traditional shrines to atone for the sins of their past relatives, a recent documentary by a private TV station shows that the practice still persists.⁹² As argued in previous chapters, while state legal norms strengthen the sovereignty

⁸⁸ Hanson and Ruggiero, “Child Witchcraft Allegations and Human Rights,” 11. See also Maakor Quarmyne, “Witchcraft: A Human Rights Conflict Between Customary/Traditional Laws and the Legal Protection of Women in Contemporary Sub-Saharan Africa,” *William & Mary Journal of Women and the Law* 17, no. 2 (2011): 475–507. See de Boeck, “At Risk, as Risk,” 134.

⁸⁹ International Council on Human Rights Policy, “When Legal Worlds Overlap,” 17; An-Na’im, “Cultural Transformation and Normative Consensus,” 67–69.

⁹⁰ Hallie Ludsin, “Cultural Denial: What South Africa’s Treatment of Witchcraft Says for the Future of Its Customary Law,” *Berkeley Journal of International Law* 21, no. 1 (2003): 62–110 especially at 109.

⁹¹ International Council on Human Rights Policy, “When Legal Worlds Overlap,” 51.

⁹² TV3 Network, “Trokosi Elders Abuse Girls’ Rights?,” June 5, 2016, <https://www.youtube.com/watch?v=Uno11-HM6Pw>.

of the State, in a “semi-sovereign” state such as Ghana, enforcement of the law depends on collaboration of the various actors.

As will be seen later in the discussion on the normative component of legal pluralism, due to the strength of religious convictions and customary beliefs and practices, scholars have raised concerns over the weaknesses inherent in using non-Western human rights and legal models in addressing particular local situations.⁹³ Because child witchcraft maltreatments, like other forms of violence, are deeply embedded in the local context, its prevention also becomes problematic.⁹⁴ A key challenge is that the townspeople who are to report cases of abuses are the very people who perpetuate these abuses. As Christina Bicchieri has recently noted, a change in social norms (including people’s preferences, beliefs and social expectation)⁹⁵ is often resisted by the very people. As a result, she suggests, it requires tactful employment of the necessary tools for change including legal and economic interventions, the media, and community deliberation.⁹⁶ In discussing normative dimensions of legal pluralism later in Chapter five, I will illustrate the ways in which addressing religious-law challenges in society requires collaborative efforts of the various “reference networks,” that is, the key actors identified in this work whose voices carry weight in society.

There are reports of Ghanaian children urging parents, caregivers and other actors not to rely on out-of-court settlements for cases such as child sexual abuse.⁹⁷ The difficulty is that Ghanaians, like most postcolonial Africans, continue to victimise claimants of rights. Owing to the influence of the communal bond, societal attitudes towards those who take their cases to the civil courts for justice to be done are often negative. In some cases, law enforcers are even believed to have sided with the accused and have blamed complainants for occasioning the circumstances that lead to their abuses. In one such case, a police officer was reported to

⁹³ Ann Whitehead and Dzodzi Tsikata, “Policy Discourses on Women’s Land Rights in Sub-Saharan Africa: The Implications of the Re-turn to the Customary,” *Journal of Agrarian Change* 3, no. 1–2 (January 2003): 67–112. Whitehead A. and D. Tsikata, “Policy Discourse on Women’s Land Rights in Sub-Saharan Africa

⁹⁴ Sally Engle Merry, “Human Rights and Transnational Culture: Regulating Gender Violence through Global Law,” *Osgoode Hall Law Journal* 44, no. 1 (2006): 54–75.

⁹⁵ Christina Bicchieri, *Norms in the Wild: How to Diagnose, Measure, and Change Social Norms* (New York: Oxford University Press, 2017).

⁹⁶ Bicchieri, *Norms in the Wild*, 142–62.

⁹⁷ Stephen Mugambi and Bernard Morara, “Report on the Proceedings of the Second International Conference in Africa on Child Sexual Abuse” (Polevek Enterprises, 2012), 1.

have labelled an eight-year old girl who was beaten by his uncle as a “spoiled child” implying a justification for the uncle’s action.⁹⁸

The above challenges illustrate that many families have less favourable attitudes towards state legal and human rights norms and therefore rely on non-state justice systems to seek redress in cases of witchcraft. Because social imbalance is a major challenge, it also inhibits effective management of child witchcraft accusations and maltreatments. The situation in most postcolonial nation-states is such that, as the 2009 International Council on Human Rights Policy report on legal norms has observed: “those on the margins of society are also on the margins of legal orders, state or non-state.”⁹⁹ In Ghana, those on the margins of society prefer to rely on the *duabɔ* (imprecation) or the popular *fama Nyame*, (leave it to God) mechanisms.¹⁰⁰ These moral mechanisms are a popular extra-legal mode of addressing many of the social issues that would otherwise have been settled justly if there were to be proper collaboration between state and non-state legal forums.

Accused child witches face yet another major challenge regarding the state legal interventions used to deal with their plight. These interventions serve as a challenge to the basic idea of the decoupling of religion and state. Witchcraft and other “juju” cases are seen as a metaphysical phenomenon that falls outside the legal realm. The constitutional guarantee of freedom of religion and belief implicitly allows for freedom to believe in someone or oneself as a witch.¹⁰¹ As such, it will be interesting for legal philosophers to begin debating on whether or not criminalising accusations, for example, limits the target’s constitutional rights. Part of the problem has been that due to legal sophistication it is difficult, if not impossible, for people to present evidence-based claims which the court demands in order to prosecute witchcraft accusations. Episodes of witchcraft accusations will hence be tried within the framework of defamation, slander, character assassination, causing bodily harm, murder, among others, thus evading the “real” issue confronting the parties to the case.

The case of *Obeng alias Nkobiahene v. Dzaba* –a non-witchcraft related case – concerns the reversal of a curse and provides an instance for interrogating the civil courts’

⁹⁸ Gwyneth Dunsford, “Ghanaian Police Covers up Child Abuse, Says Legal Expert,” *Journalists for Human Rights*, n.d., <http://www.jhr.ca/blog/2012/04/ghanaian-police-unit-covers-up-child-abuse-case/>.

⁹⁹ International Council on Human Rights Policy, “When Legal Worlds Overlap,” 51.

¹⁰⁰ Tweneboah, “The Culture of Duabɔ (Imprecation).”

¹⁰¹ Erwin van der Meer, “Child Witchcraft Accusations in Southern Malawi,” *The Australasian Review of African Studies* 34, no. 1 (June 2013): 129–44, especially at 139.

lack of interest in spiritual justice. The case which was related to land dispute involves an agreement by the plaintiff and the defendant to submit themselves to the cause to a traditional shrine for spiritual justice. They had invoked the powers of the traditional deity to imprecate each other as a result of struggles over the ownership of the disputed land. Among others, the High Court held that while: “The efficacy of the fetish is traditionally believed by Africans and Ghanaians alike. However, in a court of law it is difficult, if not impossible, to adduce legally acceptable evidence to establish the efficacy of the fetish.”¹⁰²

The case of *Regina v. Ahenkora and Badu* also provides insights into this situation. In this case, the deceased, James Ahenkora approached Badu, a “jujuman” (traditional ritual specialist), for rituals to increase his business prosperity.¹⁰³ As part of the rituals, Ahenkora, Badu and Mensah (the only material witness) went to the cemetery at night. Part of the rituals to summon the spirits for the others to present their requests was for Badu to fire a gun in which Ahenkora was killed. His counsel raised the defence of accident. In this case, the earlier conviction of the accused was quashed by the court of appeal on the opinion of the judges that “the case against the appellants was not established with that degree of certainty required by law to support conviction.”¹⁰⁴ The law courts, thus, focuses attention on matters of legal or evidential importance leaving out the spiritual dimension.

From these cases, we realise that in matters of certain cases that touch the hearts of the people, the courts either reify the belief in spiritual matters as non-existent or ignores it due the legal disbelief in metaphysical issues. It is also argued that while the civil court pushes the burden of proof on the accused, the law also often fails to define what is it that the prosecution is trying to prove.¹⁰⁵ The legal confusion between what constitutes sorcery and witchcraft, a distinction found by anthropologists as existing in indigenous people’s worldview,¹⁰⁶ has over the years been a source of tension in society and a worry to many who believe in witchcraft. As a result, where state legislation refuses to take into consideration the religious and social circumstances under which the belief and practice of witchcraft occurs

¹⁰² In the case of *Obeng alias Nkobiahene v. Dzaba* (1976) 1 GLR 172.

¹⁰³ *Regina v. Ahenkora and Badu* (1960), GLR 160.

¹⁰⁴ *Regina v. Ahenkora and Badu*

¹⁰⁵ Roberts, “Witchcraft and Colonial Legislation,” 489.

¹⁰⁶ E.E. Evans-Pritchard, *Witchcraft, Oracles and Magic among the Azande* (Oxford: The Clarendon Press, 1937).

but rather punishes the accused or accomplice, then as Clifton Roberts has said, in the minds of the people it becomes “neither good law nor wise policy.”¹⁰⁷

3.4.2 Non-Religion Derived Actors

I now briefly discuss the role that both the media and human rights activists play in issues of witchcraft accusations in Ghana. To the extent that witchcraft has a strong influence in society, non-religious actors, particularly the mass media, the local movie industry, and human rights NGOs have taken interest in it. Like all cases of local culture and human rights, the involvement of these non-religion derived actors, however, has been ambivalent and has raised certain challenges which I succinctly highlight.

With reference to the role of the mass media (print, film and television), they fill in the gap which state inadequacy has created concerning witchcraft narratives. Owing to its pervasiveness and the societal interest in it, there has been a lot of responses especially from the Ghanaian tabloid press such as the *P&P (People and Places)* as well as the local movie industry. Birgit Meyer, for example, has written a great deal about images of the devil and evil spirit in the media and pentecostal discourse.¹⁰⁸ The movie industry, for example, make fortunes by consistently producing films in which child witches are central figures. For example, the video-movies, *Nsuo Ba* (*nsuo*, river, and *ba*, child) and *Abayifo Teacher* (*abayifo*, witches) provide classic examples of children as agents of the devil through witchcraft activities.

Some private FM and television stations also dedicate especial programme in relation to witchcraft and evil forces. Prominent among such programme include *Etuo mu Esum* (literally “the barrel of a gun is dark”) which attracts both local and diaspora Ghanaian listeners.¹⁰⁹ During this programme, district and regional correspondents as well as reporters from affiliate FM stations give accounts of stories of demonic occurrences. I have previously mentioned the popular weekly programme *Asumasem* (hidden things) which is shown on a private (Adom) TV station part of which is dedicated to the activities of witches. During this programme, self-confessed witches and prominent witchcraft ritual specialists from diverse religions are invited into the studios to give testimonies of their encounter with witches. The

¹⁰⁷ Roberts, “Witchcraft and Colonial Legislation,” 492.

¹⁰⁸ Birgit Meyer, “‘Tradition and Colour at Its Best’: ‘Tradition’ and ‘Heritage’ in Ghanaian Video-Movies,” *Journal of African Cultural Studies* 21, no. 1 (2011): 7–21.

¹⁰⁹ “Etuo Mu Esum,” n.d., <https://www.facebook.com/pages/ETUO-MU-YE-SUM/199893286866315>.

programme allows listeners to phone-in and share their experiences or encounters with witch spirits. It was during one of such programmes that the seven self-bewitchers cited earlier narrated their encounter with witchcraft operations.

From this, we see that the mass media is actively engaged in openly discussing the subject of witchcraft which though pervasive was rarely discussed previously. The challenge with both the media and the movie industry is that while they serve as a major voice for children so-accused, they have also worsened the plight of these children. The stereotypical images of child witches found in Ghanaian movies indeed portray the clash between the different normative systems and a clash between traditionalism and modern culture. Meanwhile, some of the movies (for example, *Nsuo Ba*) project the traditional belief in witchcraft as the source of many of the misfortunes in the family and the wider society. In virtually all the movies with themes of witchcraft, the end result is a pastor-prophet defeating agents of the devil whose familiar is the child-witch.

Similarly, the local FM stations, like the movie industry, have created a lot of press panic, intensifying the conditions of child-witches.¹¹⁰ Some of the stories in the press are, intentionally or not, crafted to confirm the extraordinary powers of witchcraft ritual specialists. Needless to say, most of the accused witches at the centre of such stories have time and again had an alibi. That is, some of these witches often have been misrepresented. Alleged witches, on their way to witches meetings have reportedly crashed land on crossing an all-night or a powerful prayer zone.¹¹¹ In all these, it later turned out that the victims of such stories could neither talk properly nor make meaningful sense of how they found themselves in that particular location at the time. Some were later identified as inmates of psychiatric hospitals who have broken bonds.¹¹² In the end, programmes meant to discuss witchcraft become a source of entertaining listeners and portraying the spiritual prowess of invited witchcraft ritual specialists. But such contradictions must also be seen as tension between traditional role of the media in informing their audience and their profit making motif. While the media have raised concerns and awareness on the manner in which pastor-

¹¹⁰ Peter Hoffer writing on Salem witch trials identified “rumor, panic, fearfulness, cultural dysfunction, and official incapacity” as possible causes of the violence and maltreatment against suspected witches. Hoffer, *The Devil’s Disciples*, 202.

¹¹¹ Linda Tenyah, “Flying Wizard Crash Lands At Kasoa,” *Daily Guide*, December 1, 2013; Solomon Ofori, “Suspected Witch Escapes Lynching,” *Daily Guide*, May 15, 2015.

¹¹² “Suspected Wizard Is a Mental Patient,” *Daily Guide*, November 30, 2013.

prophets portray their “clients” on televisions and other media outlets, they (the media) become the very platform used to popularise such spiritual fame.

In addition to the media, there has also been a strong presence of local and international non-state actors such as Amnesty International, Human Rights Watch, UNICEF, USAID, etc. There is little doubt that in diverse ways, these organisations have been proactive in helping children achieve their desired aspirations. They are involved in educating, pushing for the eradication of oppressive customs and practices and reintegrating accused witches. Yet these non-state actors – operating as saviours-from-outside – are mainly interested in the (mal)treatment of child witches. Like the state legal system, human rights NGOs pose significant challenges to the discourse of witchcraft accusations. Relying mostly on civil law systems and local and international human rights standards, these organisations are interested not in the belief per se, but rather the breach of the fundamental rights and freedoms of children so accused, especially the physical and psychological maltreatments involved. Their proposals and interventions are therefore action-based, leaving out the religious and customary complexities of witchcraft occurrences.¹¹³

In a legal plural society such as contemporary Ghana, a major normative challenge to addressing this issue is that most of these organisations are headquartered in Western secularised countries whose conceptions of witchcraft differ from those of the traditional societies of Ghana. Consequently, their approaches to the problem have sometimes been unhelpful and devoid of the socioeconomic and religious cultural realities already discussed. Jon Kirby has surmised the problem thus:

...perhaps because they receive support from the West, they take the Western approach to these social woes. They rely on funding from the West where people do not believe in witchcraft and Western law which denies the existence of witchcraft. But in doing so they are also disregarding the strong beliefs that the people have in it. The fact that places like this exist is an affront to them and the cause for which they stand. They take it as a kind of challenge – and this becomes more important than the women’s welfare.¹¹⁴

The image of Ghana abroad, hence, becomes a major concern to most non-state human rights actors. Often times, they employ terminologies which some have described as insensitive to the religious and cultural values of society.¹¹⁵ This saviour-from-outside approach has had

¹¹³ Hanson and Ruggiero, “Child Witchcraft Allegations and Human Rights,” 13.

¹¹⁴ Jon P. Kirby, “Earth Shrines: Prison or Sanctuary? Ghanaian ‘Witch Camps’ and the Dawn of the Rights of Culture,” in *Contemporary Social Problems in Ghana*, ed. Steve Tonah (Accra: Yamens Press Ltd, 2009), 51.

¹¹⁵ Abamfo Ofori Atiemo, “Filling the Gap: Why Prayer Camps in Ghana Are Sometimes the Only Option,” *Opendemocracy.net*, November 17, 2014, <https://www.opendemocracy.net/openglobalrights/abamfo-ofori-atiemo/filling-gap-why-prayer-camps-in-ghana-are-sometimes-only-option>.

certain challenges. For example, there have been concerns that between 1994 and 1998, 137 former “witches” in the various “witches’ camps” in northern Ghana were reintegrated into their communities. Within the same period, however, 126 others were sent into the Gambaga witch camp alone.¹¹⁶ Most of the resettled women were later maltreated or killed in situations that escape public scrutiny.¹¹⁷ In a recent occurrence of this situation, on 9 September 2016, but for the timely intervention of the police and a family head, a 54 year old man would have reportedly been lynched by residents of Choggu Nmanaayili in the Norther region of Ghana. The man with two others was said to have been banished by the chief of the village after allegations of using witchcraft to cause the death of another man. A couple of weeks after, he returned to the village to the annoyance of the youth who decide to seek mob justice on him, a situation that led to a clash between the youth of the village on the one hand the man’s family members and the police, on the other hand.¹¹⁸

The government has shown determination to close down all the camps in the country.¹¹⁹ This closure, in fact, will benchmark the global image of the country in terms of its adherence to human rights protocols and standards. However, the fate of these and other suspected witches is still unknown or assured as the socioeconomic, political and customary conditions that make people mobilise the old religious belief in witchcraft continue to challenge the postcolonial nation-state.¹²⁰ It is for this and other similar reasons that most people prefer to rely on witchcraft ritual specialists especially pastor-prophets whose position also presents ambivalent tensions in society especially when child-witchcraft phenomena is considered.

¹¹⁶ For an analysis of this situation see, for example, Elom Dovlo, “Witchcraft in Contemporary Ghana,” in *Imagining Evil: Witchcraft Beliefs and Accusations in Contemporary Africa*, ed. Gerrie ter Haar (Trenton and Asmara: African World Press, Inc., 2007), 86.

¹¹⁷ *Daily Graphic*, August 24, 1999, 1.

¹¹⁸ Zubaida Ismail, “Wizard Escapes Death as Angry Mob Storms His Residence,” *3news.com*, September 9, 2016, <http://3news.com/nr-wizard-escapes-death-as-angry-mob-storms-his-residence/>. See also “Tamale Youth Attack Suspected ‘witch’; 3 Injured,” *Ghanaweb.com*, September 9, 2016, <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/Tamale-youth-attack-suspected-witch-3-injured-468771>.

¹¹⁹ Samuel Doudu, “Bonyase Witches Camp Closed down,” *Daily Graphic*, December 17, 2014.

¹²⁰ Carolyn Dunn, “Ghana Witch Camps Shutting Down, Leaving Accused in Limbo,” *CBC News*, March 7, 2015, <http://www.cbc.ca/news/world/ghana-witch-camps-shutting-down-leaving-accused-in-limbo-1.2979863>.

3.5 Pentecostalism and Child Witchcraft

In this section, I examine a third assumption of this chapter, namely alongside other factors, the position of pastor-prophets in relation to witchcraft accusations and abuses have been necessitated by postcolonial marginalisation. Without essentialising the functionalist role of pastor-prophets, I espouse the view that there is a need to interrogate how pastor-prophets have risen to prominence in society. In line with the major claim of this thesis, I contend here that to be able to make sense of the challenges religious actors pose in their engagement with witchcraft activities, we should also examine the vacuum created by the postcolonial nation-state.

Existing scholarly studies and important activist reports have accused religious actors of exacerbating the conditions of child witches taking less account of the crucial contexts that give currency to the activities of witchcraft ritual specialists. Pastor-prophets in particular are generally accused of engaging in witchcraft activities as a contemporary form of “church business.”¹²¹ Some contend that witchcraft persecutions are a lucrative ‘business’ for many pentecostal actors.¹²² In the DR Congo, for example, there are reports that owing to the widespread belief in witchcraft, exorcism is a religious commerce where pastor-prophets operate as religious entrepreneurs.¹²³ In these and similar works, religion is surprisingly linked with financial gains as a motivating factor for witchcraft performances.

Pastor-prophets are also blamed of engaging accused witches in violent deliverance rituals, according to a 2002 USAID study.¹²⁴ In Ghana, pentecostal discourse on demons and other narratives on ancestral curses are thought to provide a context for the perpetuation of witchcraft beliefs and witch-demonic powers.¹²⁵ Elsewhere, I have examined how pastor-prophets subject accused witches to various forms of actual and symbolic violence some of which have human rights implications including death.¹²⁶ Here too, I have mentioned the

¹²¹ Temidayo David Oladipo, “Contemporary ‘Church Business’, Child-Witches and National Economic Misfortunes,” in *Suffereth Not a Witch to Live: Discourse on Child-Witch Hunting in Nigeria*, ed. Adeyemi Johnson Ademowo, Gary Foxcroft, and Temidayo David Oladipo (Ibadan: Ayomide Publications, 2010).

¹²² Aleksandra Cimpric, “Children Accused of Witchcraft: An Anthropological Study of Contemporary Practices in Africa” (Dakar: UNICEF WCARO, April 2010), 3.

¹²³ Molina, “The Invention of Child Witches,” 6.

¹²⁴ Lynne Cripe et al., “Abandonment and Separation of Children in the Democratic Republic of the Congo,” *U.S. Agency for International Development*, 2002, 15–19.

¹²⁵ Opoku Onyinah, “Contemporary ‘Witchdemonology’ in Africa,” *International Review of Mission* 93, no. 370–371 (October 2004): 327–542.

¹²⁶ Tweneboah, “Pentecostalism, Witchdemonic Accusations.”

story of the 44-year old woman who was charged with cruelty by the law enforcement authorities for forcefully feeding a seven year old boy with human waste. The woman's action follows a pastor's revelation that the boy was a witch and was the reason why the boy's grandmother (the woman's mother) was constantly sick.¹²⁷

Some have observed that while accusations are mostly generated within the family, these are officially legitimated by churchly leaders.¹²⁸ Indeed there are cases of such incidents. For example, on December 2008, the law a 52-year old prophet was arrested at a place near Accra over the death of a seven year old boy accused of witchcraft. The parents of four children (a seven year-old girl, and three boys who were nine, seven and five years old) took them to the prophet for spiritual cleansing after continuous ailment. During this period, the prophet reportedly told the parents the children were witches and hence needed to confess. The deceased who persistently denied possessing the spirit was said to have been tied to a pawpaw tree and was repeatedly beaten and starved in order to extract confession until he died. The newspaper reported that he defecated and passed urine onto his pants because he was not allowed to free from his bond. After his death, the parents were told an angel struck him dead for refusing to confess.¹²⁹

These instances paint a negative image of pentecostal pastor-prophets in most activist reports. Despite this, it is observable that pentecostalism plays a socially and politically crucial role which for a long time was neglected by actors of colonial and postcolonial state and mission Christianity. Initial mission Christian approach towards witchcraft in Ghana was one of defensive. Early mission churchly leaders reified beliefs in witchcraft admonishing its members to treat it as an irrational superstition.¹³⁰ This, however, could not prevent societal imaginations of the activities and operations of witches. As intimated in section one, the early part of the twentieth century was a period of the rise of anti-witchcraft shrines in colonial Ghana. Both colonial rationalist argument and British legislations such as the Native Administration Ordinance of 1927 could not limit accusations and activities of anti-witchcraft

¹²⁷ Linda Tenyah, "Woman Feeds Boy with Shit, Urine," *Daily Graphic*, October 3, 2009, <http://www.modernghana.com/news/241927/1/woman-feeds-boy-with-shit-urine.html>.

¹²⁸ de Boeck, "At Risk, as Risk," 131. See also Naomi Cahn, "Poor Children: Child 'Witches' and Child Soldiers in Sub-Saharan Africa," *Ohio State Journal of Criminal Law* 3 (2006): 422–24; Gary Foxcroft and Emilie Secker, "Report on Accusations of Witchcraft Against Children in Akwa Ibom State, Nigeria Stepping Stones Nigeria," December 2010, 4.

¹²⁹ Rocklyn Antonio, "Pastor Kills Boy over Witchcraft," *Daily Guide*, December 5, 2008, <http://www.modernghana.com/newstthread/193574/1/41392>.

¹³⁰ Debrunner, *Witchcraft in Ghana*.

movements. More vitally, the period also coincided with the rise of African initiated spiritual churches and itinerant *Mallams* (Muslim clerics) who sought to offer assistance for those searching for socioeconomic and spiritual security.¹³¹

Unlike European churchly and political actors who downplayed social realities such as witchcraft, early pentecostals combined traditional religious and Christian beliefs and practices to confront these realities and the existential needs of the people.¹³² By the 1980s, for example, local pentecostals were showing video-movies of the realities of the devil and his cohorts including witches. In addition to warning believers against witches, pentecostals assured believers of the potency of the blood of Christ in defeating every witchcraft activity. This helps us comprehend why Ghanaian deliverance-based pentecostalism with its historical continuities with early African initiated churches has been very successful in the discourse of witchcraft.

If pastor-prophets have become successful witchcraft “entrepreneurs,” then it is not because of the economic motif as is often assumed. What is missing in such assumptions is that contemporary pastor-prophets have succeeded in areas where both the historic churches and the postcolonial nation-state have failed.¹³³ Pastor-prophets have been successful in addressing the basic social, economic, political and spiritual needs of the people which in pentecostal and traditional religious imaginations are connected. Unlike the non-pentecostal churches which put less emphasis on witchcraft,¹³⁴ pastor-prophets’ inclination to innovatively incorporate traditional worldviews regarding witchcraft and other evil forces into Christian teachings and practice has become a driving force for attracting followers. I have established how economic and other uncertainties in society give rise to bewitchment. Pentecostal discursive practices on witchcraft provide a platform where the disenchanted individual confronts realities of the postcolonial nation-state.

Some pentecostal discourses assume that sin, bewitchment and misfortunes and deliverance are lineally interconnected. A churchly actor, Evangelist A explains that his

¹³¹ Assimeng, *Religion and Social Change in West Africa*, 178. For an account of the historical rise of these churches see Omenyo, *Pentecost Outside Pentecostalism*.

¹³² E Kingsley Larbi, *Pentecostalism: The Eddies of Ghanaian Christianity* (Accra: Centre for Pentecostal and Charismatic Studies, 2001), 391.

¹³³ In the early period of the twentieth century, for instance, the people’s frustration and disenchantment with missionary Christianity facilitated the emergence of African initiated churches such as the Musama Disco Christo Church and others. See, for example, Robert W. Wyllie, *Spiritism in Ghana: A Study of New Religious Movements* (Missoula, Montana: Scholars Press, 1980), 21.

¹³⁴ Debrunner, *Witchcraft in Ghana*, 143.

church's belief is that "when you sin, sin will scrape you. Even if you put God's word aside, whoever sins does not have their peace of mind. So we are against sin. If you have not sinned, it will be difficult for someone to successfully bewitch you because the Bible says the angel of the Lord encamps around those who fear him, and delivers them."¹³⁵ According to Evangelist A, anyone who walks with the Lord, who sits under His feet and is still bewitched is not of good standing in their faith. In other words, such people are not properly dwelling under God's feet. "If you walk properly on God's path, He protects you. So even though we believe that witchcraft is real, we don't emphasise so much on accusation," he says. Rather they underscore the importance of protective prayer which Meyer has explained in terms of deliverance. The evangelist's description of the "problem" and its "solution" fits well into pentecostal claim espoused earlier in Chapter two, viz., even where physical problems are spiritually caused, prayer and good relations with the Lord alone can avert them.

Pastor-prophets have been successful where the state has failed especially in its modernisation project. Evangelist A's claim echoes pentecostal proclivity to provide their members with symbolic capital to draw upon to conquer the challenges of modernity. Quite akin to the modernisation thesis, they often embark on the project of cultural discontinuity. Working but unsuccessful youth, we know, blame envious relatives of their hopelessness in life. But in pentecostalism members are assured that success in the present (contemporary) life can only be attained through overcoming the forces that reside in the old traditional space. In his teaching on overcoming the devices of the enemy, for example, the Presiding Archbishop and General Overseer of the Action Chapel International, Nicolas Duncan Williams, admonishes believers to break free from the curses imposed by the devil in order to be successful. He preaches that:

Curses can give the strong man access to an individual. A curse offers demons legal grounds to operate in people's lives. The danger about curses is that, they can affect born-again Christians. The fact that something is legally yours does not matter to the enemy. Satan and his demons work to deprive people of all that belong to them. They will seek out grounds to deny people of the will of God for their lives.¹³⁶

¹³⁵ Interview with Evangelist A, February 15, 2015.

¹³⁶ Nicolas Duncan Williams, *Powers behind the Scene: Rediscover Your Power as a Believer to Overcome the Devices of the Enemy* (Prayer Summit Publishing, 2014), 75–76.

Deliverance from evil forces (the enemy), as Evangelist A also argues, requires a thorough examination of one's standing in God's presence. It also includes cultural discontinuity, which according to van Dijk, embodies a moral reordering of the postcolonial society.¹³⁷

Admittedly, pentecostal discourse of making a complete break with the past¹³⁸ presents society with tensions between tradition (religious, cultural and customary practices) and modernity (pentecostalism). In this tension, abuses occur which often become the subject of activist reports. In the case of the seven year old boy who was accused of witchcraft, I pointed out how the prophet persistent tortured the boy to confess that he possessed the spirit in order to be set free.

Pastor-prophets' active engagement with witchcraft activities is also a by-product of the increasing growth of pentecostal Christianity. With the loss of popularity of the traditional anti-witchcraft shrines, and with the growth of pentecostalism, pastor-prophets have taken over witchcraft ritual activities.¹³⁹ Pentecostals embark on an effective proselytising approach which has systematically turned people's attention away from anti-witchcraft shrines and other alternative sources of managing witchcraft menace in society. I have said in Chapter two that pentecostals view the traditional religious field and its ritual space as representing an illegitimate source of spiritual protection. People who seek protection outside the power of Christ only obtain a protection which is merely transient and illusory. Such people are manipulated by demons and their problems are more likely to resurface.¹⁴⁰ We get a sense that people who want to have a lasting solution to their plight prefer relying on pastor-prophets than on an alternative source where the problem might re-emerge. The implications of such proselytising strategy are a subject of ongoing scholarly debate.¹⁴¹

¹³⁷ Rijk van Dijk, "Pentecostalism, Cultural Memory and the State: Contested Representations of Time in Postcolonial Malawi," in *Memory and the Postcolony: African Anthropology and the Critique of Power*, ed. Richard Webner (London and New York: Zed Books, 1998).

¹³⁸ Meyer, "Make a Complete Break With the Past."

¹³⁹ Opoku Onyinah, "Deliverance as a Way of Confronting Witchcraft in Modern Africa: Ghana as a Case History," *Asian Journal of Pentecostal Studies* 5, no. 1 (January 2002): 123–50.

¹⁴⁰ Uzorma, *Occult Grand Master*, 13.

¹⁴¹ Makau wa Mutua, "Returning to My Roots: African 'Religions' and the State," in *Proselytization and Communal Self-Determination*, ed. Abdullahi Ahmed An-Na'im (Eugene: Wipf and Stock Publishers, 1999).

In the discussion on witchcraft accusations, pentecostal prayer and healing camps are accused of being complicit in cases of accusations and abuses.¹⁴² A 2012 Human Rights Report in Ghana has decried the deplorable conditions in which mental health patients of prayer camps live including prolonged detention, overcrowding and poor hygiene, chaining, forced seclusion, etc. These prayer centres are also home to accused witches and their conditions are not different. These problems certainly constitute human rights challenges resulting from religious activities. Beyond this, however, in Ghana, these prayer centres reveal a complex religion-state relationship. In the face of state's inability to deal social welfare and other issues, prayer centres become inevitable sanctuaries of hope for many families. As mentioned in the case of the ten year old boy whose grandmother sent him for exorcism, many of the clientele are sent for prayers because their relatives and the larger society are unwilling to accept them owing to the perceived spiritual afflictions. While abuses that occur in the name of deliverance are a violation of state legal norms protecting the child, these violations can be said to be a result of overzealous ritual specialists whose approach to issues of exorcism departs from mainstream modes of deliverance namely, the use of the word of God. As Evangelist A argues:

If there's a spirit in someone and you are not able to rebuke it then it tells much about your Christian life. The Bible says He has given us power over spirits and principalities. If that power is in me and I command it, why won't it go away?.. If it refuses to go away then there is a question mark on me. I need to examine my position in the presence of God. Perhaps His Spirit has left me.¹⁴³

His view about those who use force during exorcism is one of aversion. As he posits:

My brothers who do that [use force during exorcism] are not of God. God has not called them because the spirit cannot be caned; the spirit cannot be burned with pepper. We don't rebuke the spirit with such elements. We use the word of Jesus Christ. We use that power to drive it and not any charms, anointed oil or anything.... Christ never did that. He never tied anyone to the tree.¹⁴⁴

Pastor-prophets offer to liberate accused witches and to also protect the bewitched. Deliverance centres are, thus, not only sanctuaries of spiritual relief, but also economic and social terminal points for the hopeless in the postcolonial society. Many parents send their children to these centres for deliverance after social welfare systems and other state

¹⁴² Cimpric, "Children Accused of Witchcraft"; Hanson and Ruggiero, "Child Witchcraft Allegations and Human Rights"; Cahn, "Poor Children"; Human Rights Watch, "'Like a Death Sentence:' Abuses against Persons with Mental Disabilities in Ghana."

¹⁴³ Interview of February 15, 2015.

¹⁴⁴ Interview of February 15, 2015.

interventions have been lacking.¹⁴⁵ Thus, deliverance-based pentecostal centres are also places for resolving familial and social crises. Child witches who are delivered are warned against recontamination before they are reunited with their families who would hitherto have feared them.

3.6 Conclusion

In this chapter, I have shown that witchcraft is a time-honoured belief. As an old religious-customary belief, it continues to thrive in contemporary Ghana because people believe in it. Beyond this, it is also one of the means through which tensions between tradition and modernity are both manifested and mediated. It is used in recent times to provide a platform within which competing claims between the different normative values are translated into reality. Child witchcraft phenomenon, a relatively recent occurrence, has been used by scholars interested in this contest to explain the nature of tensions between the two worlds of tradition and modernity.

I have offered three insights into child witchcraft phenomenon by first, delineating how changing realities in contemporary Ghana promotes child witchcraft accusations. I have spotlighted on how the clash between secular and modernising aspiration of contemporary Ghana and the old social values translate themselves into accusations of witchcraft. Social and economic pressures on families have led to most parents turning their children not only into essential helping hands in the family but also main sources of economic security. More importantly, state insistence on the rights of the child has been blamed as providing a framework for bewitchment as children compete for limited power in society. State legal norms, despite the many advantages, are believed to have also brought about irreversible reorganisation of kinship values and reciprocal responsibilities. This situation is thought to occasion a shift from adult to child witchcraft accusations both in local and diasporic settings. I have illustrated how organised belief and accusations increase in times of economic dislocation.

A second major contribution of this chapter is that I have departed from the dominant discourse that portrays accused witches as passive participants of the conditions which occasion their accusations. My analysis has moved beyond this by making a distinction between self-bewitchers and the other forms of witches especially those who are socially ascribed. Using extant and fresh evidence from the field, I have elucidated the idea that in

¹⁴⁵ Atiemo, "Filling the Gap."

downplaying the belief and ignoring the voices of self-confessed witches in scholarly discussions and activist reports, latent injustice is done to the very people we seek to speak for. I have argued that self-bewitchers are not just docile bodies or passive participants in the drama of the changing society. They must neither be solely viewed as sufferers of neurotic disorder. Importantly, self-bewitched children are children who consciously deploy witch spirit to create new space as the old and the new societies and their values clash. In the face of the inability of postcolonial legal and economic policies to protect the child, religious imaginations that employ witchcraft becomes for the self-bewitched a mode of fitting into the new society.

Thirdly, the chapter has situated pastor-prophets in the proper context of witchcraft discussion by critiquing existing reports that often blame prayer camps and pentecostal Christianity. My analysis of individual cases in this chapter has revealed that in general, other factors beyond economic interests come into play when engaging in witchcraft discourses. Many Ghanaians are fully aware that physical and spiritual vigilantism against alleged witches is not the best form of justice delivery but they are also less confident that things will get better should they leave the situation to State agents who cast themselves as mediators of competing claims, hence such people's reliance on spiritual centres. Therefore, if scholars, state and non-state actors revise their assumptions about witchcraft and the activities of prayer and healing camps, they may be able to engage in communities affected by beliefs in witchcraft. These prayer and healing camps, albeit the abuses, mostly serve as the terminal points for clientele. Most of the people who engage in the services of prayer and healing camps do so after they have explored other secular avenues of seeking security in life. Lack of availability of resources to help victims often leads them to relying on religious ritual specialists where they end up being considered and abused as witches. Thus witchcraft ritual specialists are both an essential part of the problem and the solution.

CHAPTER FOUR: RELIGION, LAW, AND SAME-SEX RELATIONSHIPS

4.1 Introduction

This chapter examines one of the central issues of religion, law and human rights in contemporary Africa: the controversy over same-sex relationships. In discussing the different levels of normative legal tensions in contemporary Ghana, one of the conclusions I drew in Chapter two was that in spite of the artificial separation of religion and state, in terms of real power and authority, none of the actors under study is independent. These actors compete and also collaborate with each other at various levels and the nature and complexity of tensions that ensue depend on interests involved. This claim requires further elaboration, which I provide in this chapter using the ongoing controversy over same-sex relationships. The argument of the chapter is that religious and customary paradigms on marriage and sexuality provide avenues for contesting external political pressure and legal influence. From this perspective, I demonstrate that while homosexuality has become a source of tension between the different normative traditions, it is also an avenue for collaboration between these traditions especially in resisting what society holds as imported practices. The chapter will, thus, show that the ongoing controversy over homosexuality is deeply significant to shedding more insights into the thesis's claim that legal pluralism is not just a tool for analysing tensions. Rather, as I also detail later in chapter five, it is a solution in itself. The ongoing politicisation of homosexuality creates both tension and cooperation among the differing legal orders in contemporary Ghana.

Early analysis of this issue have tended to focus on the debate about the (im)morality of same-sex partnership or whether same-sex partners have rights. My inquiry into homosexual controversy, however, departs from previous scholarship on homosexuality in Africa. Importantly, my interest and focus are in interrogating the kind of rights that society believes homosexuals must and must not have. This helps us delve into the nature of tensions that arise from the full enjoyment of gay rights. Understanding these tensions contributes to a deeper appreciation of the religion-law interrelationships in contemporary Ghana.

In addition to my major claim, this chapter makes three minor claims. First, that homosexuality in contemporary Ghanaian society is a religious as well as a secular offence. I use both historical materials and interviews from my field to make sense of how ancestral law on sexuality has, over the years, tacitly been used to maintain hegemonic power-relations as well as social cohesion. The second claim is that there is a broad interrelationship between

the religious, the legal and the political dimensions of homosexuality in contemporary Ghana. I illustrate the way that in the ongoing politicisation of homosexuality, the religious and the customary are translated into the legal and the political realm and vice versa.¹ In particular, I show the extent to which even though state law prohibiting homosexual relationships reflects Victorian values of the nineteenth century colonial Christianity, it is now used by both Christians and State actors to defend traditional values.²

Despite state norms protecting individual freedoms including sexual freedom, the State is unable to fully invoke its legal systems in topics related to homosexuality due to the strong hold of religious and customary notions on sexuality. State regulation of what it considers legitimate and illegitimate marriage, heterosexual monogamy, and age of sexual consent and marriage is not a sheer mechanism of controlling its members but also a way of responding to the needs of the moral majority of society. In a society where research has shown that over 96% of the population are against homosexuality,³ and over 98% (the highest rate globally according the Pew Research survey) see it as morally unacceptable,⁴ it is understandable why the State of Ghana invokes religious arguments to resist the legalisation of homosexuality.

The third claim is that religious and customary solidarity are vital for the nation-state to assert its sovereignty when it comes to resisting external pressure to legalise homosexuality. This claim brings another dimension of complexity to the previous argument in Chapter two that, under certain conditions, State, chiefly and churchly actors come together when they perceive that traditional values are under attack from external agents.

I tease out the human rights tensions and implications of these three claims. The dominant perception has been that despite being a tabooed practice, homosexuality has always existed in society in the form of what some have described as a “silent trade.”⁵ The

¹ Kathleen E. Hull, *Same-Sex Marriage: The Cultural Politics of Love and Law* (Cambridge: Cambridge University Press, 2006), 5.

² Adriaan van Klinken and Ezra Chitando, “Introduction: Christianity and the Politics of Homosexuality in Africa,” in *Christianity and Controversies over Homosexuality in Contemporary Africa*, ed. Adriaan van Klinken and Ezra Chitando (New York: Routledge, 2016), 3.

³ Pew Research Center, “The Global Divide on Homosexuality: Greater Acceptance in More Secular and Affluent Countries” (Pew Research Center, June 4, 2013), 1.

⁴ Pew Research Center, “Global Views on Morality: Ghana,” Global Attitudes & Trends (Pew Research Center, 2013), <http://www.pewglobal.org/2014/04/15/global-morality/country/ghana/>.

⁵ Serena Owusua Dankwa, “‘It’s a Silent Trade’: Female Same-Sex Intimacies in Post-Colonial Ghana,” *Nordic Journal of Feminist and Gender Research* 17, no. 3 (September 2009): 192–205.

common knowledge, also supported by my fieldwork, as I analyse in this chapter, is that in the old society, violators of this sexual taboo were brutally dealt with. Yet, there is no extant record of any societal execution or sanction of same-sex partners. The mystery of why in recent times the new society would vent its anger on same-sex partners endures. Some possible assumptions can be made. Could it be that despite the ongoing strong societal prohibition on homosexuality, the old society remained lenient on offenders? At what point in the history of the encounter did executions and maltreatments of homosexuals become a problem in society? As a “silent trade” could it be that punitive sanctions against offenders were meted out covertly hence evading the curious eyes of early missionaries, colonial legal officers, historians and anthropologists? Are recent executions of and negative societal attitudes towards homosexuals exponents of imported legal norms and cultures? Does Ghana’s unclear legal position on same-sex relationship have any impact on the human rights same-sex partners? Addressing these concerns is important to situate the tensions that the coexistence of the different legal traditions in contemporary Ghana have resulted from homosexual relationships.

4.2 Religious Conceptions of Sexuality

Akan society reveals ambivalent and complicated forms of marriage and sexual intimacies which provide insights into the changes society has undergone in terms of sexual relations.⁶ Studies have identified at least twenty-four different forms of heterosexual marriages each of which created one form of tension or the other.⁷ These differing conceptions of marriage help us reflect on the legal concerns of this work, namely in talking about the law on marriage in Akan society do the people mean the same thing as it exists elsewhere? Addressing this is significant in foregrounding the recent controversy over same-sex marriage as a religious as well as secular issue. In the following, I explicate how traditional religious and customary conception of marriage and sexual intimacies provide the basis for recent tension over same-sex relationships in Ghana. I take a historical exploration for three reasons. First, it shapes societal understanding of homosexuality. Second, it challenges the historical normality of sexuality, that is, what type of sexual relationship has been deemed as always normal in

⁶ Dorothy Dee Vellenga, “Who Is a Wife? Legal Expressions of Heterosexual Conflicts in Ghana,” in *Female and Male in West Africa*, ed. Christine Oppong (London: George Allen & Unwin, 1983), 144–55. See also Italo Signorini, “Agonwole Agyale: The Marriage between Two Persons of the Same Sex among the Nzema of Southwestern Ghana,” *Journal de La Société Des Africanistes* 43, no. 2 (1973): 221–34.

⁷ Dorothy Dee Vellenga, “Changing Sex Roles and Social Tensions in Ghana: The Law as Measure and Mediator of Family Conflict” (unpublished: Doctoral dissertation, Columbia University, 1974), 55–83.

society. Third, an awareness of the past conditions helps us have a better understanding of the links between practical (what was) and normative (what ought to be) aspects of traditional notion and practice of sexuality.

There is little doubt that homosexuality forms part of the general breaches of sexual laws particularly in the past society. To be sure, even in African societies where these practices have been observed, there is evidence that they were seen as aberration, taboo or perversion.⁸ Serious traditional sexual offences also include: fornication, incest, rape, seduction and bestiality; all of which must be severely dealt with by society.⁹ There are other minor prohibitions which traditional Akan society, for example, strives to control including children watching the genitals of their parents. Unmarried young women who do not display an attitude of shyness towards men and boys were less desirable than those who do.¹⁰

As a sexually aberrant practice, both traditional and churchly adherents deem it as an offence against ancestral and God's law respectively. While both traditional and churchly leaders have used religious arguments to contest the legalisation of homosexuality, I focus on the former in this section. This is because the differing reasons State, traditional and churchly actors give to why they oppose homosexuality commonly converge to one argument – the foreign and aberrant nature of the practice.

The exact origin of homosexual practice in Ghanaian traditional societies remains obscure and conflated in scholarship on marriage, sexuality and sexual intimacy. Important conceptual frameworks suggest that homosexual conduct existed before African indigenous societies encountered introduced civilisations.¹¹ Some studies have challenged the “exoticness” and “unAfricanness” of homosexuality, critiquing dominant scholarly denials of the existence of pre-encounter existence of homosexuality.¹²

⁸ For studies elsewhere, see Neville Hoad, *African Intimacies: Race, Homosexualities, and Globalization* (Minneapolis and London: University of Minnesota Press, 2007). See also Marc Epprecht, *Heterosexual Africa? The History of an Idea from the Age of Exploration to the Age of AIDS* (Athens: Ohio University Press, 2008).

⁹ Mbiti, *African Religions and Philosophy*, 144.

¹⁰ Lystad, *The Ashanti*, 57.

¹¹ For studies elsewhere, see Hoad, *African Intimacies*. See also Epprecht, *Heterosexual Africa?*

¹² Stephen O. Murray and Will Roscoe, eds., *Boy-Wives and Female Husbands Studies of African Homosexualities* (New York: Palgrave, 1998). See also Marc Epprecht, “The ‘Unsayings’ of Indigenous Homosexualities in Zimbabwe: Mapping a Blindspot in an African Masculinity,” *Journal of Southern African Studies*, Special Issue on Masculinities in Southern Africa, 24, no. 4 (December 1998): 631–51.

Traditional Akan society's rejection of homosexuality is generally premised on the value on marriage and procreation as a religious and social responsibility. Gyekye has given a thorough explanation of this noting that:

In the traditional Akan society of Ghana, for instance – and this, incidentally, is true also of contemporary Akan society – if a man who has reached the age at which he is expected to marry does not do so or is not seen as making attempts to do so, he will be regarded, and pointed to, as a *fool* (Akan: *kwasea*). Now, the word *kwasea* is a highly abusive and opprobrious term in the Akan society, meaning more than its English equivalent connotes. In one respect the fool is simply one who is not wise [in Akan *kwasea* is often used synonymously with *onnim nyansa*, “one who does not have wisdom.” sic] But beyond that, in the Akan society, a fool is one who is considered to be irresponsible, worthless, good-for-nothing, contemptible. The term *kwasea* in that context essentially has a moral rather than an intellectual connotation: it describes a man who refuses to bear his share of social responsibility and thus behaves antisocially, unfairly, and unethically. In the traditional Akan society of Ghana if a man is well-off and yet remains single, he will be considered irresponsible, even cruel, by his kinsmen or community, and perhaps as abnormal, for falling short of the ideals of manhood.¹³

Gyekye believes that the society, however, does not suspect or associate the man who does not seem to want to marry with being homosexual, although he suggests homosexual practice is highly condemnable.¹⁴ Akan religion and psychology, however, generally associate homosexuality with certain categories of weak, effeminate (often derogatory) character traits. Gays, for example, are either rudely or euphemistically referred to as *obaa barima* (*obaa*, female, *barima*, male). They are believed to have certain personality traits that make them prone to effeminate tendencies. James Christensen, for example, postulates that among the Akan, an individual's sexual orientation is determined by his or her *sunsum* (personality). Carriers of a “heavy” or strong *sunsum* are said to be aggressive, while those with “light” or weak *sunsum* are introvert.¹⁵ He notes that men who are timid and exhibit pusillanimous tendencies – those with weak *sunsum* – are generally held as cowards, sexually deviants and mentally unstable; they are frequently found in the company of women. Women are generally believed to have light *sunsum*. Hence an extroverted woman with homosexual tendencies is considered as having “heavy” *sunsum*.¹⁶

In contemporary times, a major tension over homosexual relations therefore results from the different conceptions of marriage and sexual intimacies between the traditional and

¹³ Gyekye, *African Cultural Values*, 77–78.

¹⁴ Gyekye, *African Cultural Values*, 78.

¹⁵ James Boyd Christensen, *Double Descent among the Fanti* (New Haven: Human Relations Area Files, 1954), 92–93.

¹⁶ Christensen, *Double Descent among the Fanti*, 92.

contemporary society. Traditionally, sexual intercourse is not for biological purposes only; but also, as Mbiti has said, it is a solemn seal or signature and a “‘sacrament’ signifying inward spiritual values.”¹⁷ The physical formalities associated with marriage, for example, are held as an outward expression of a religious happening. Heterosexual marriage is then considered as not just a private affair to be left in the private domain, but rather, according to Mbiti, “a sacred drama in which everybody is a religious participant, and no normal person may keep away from this dynamic scene of action.”¹⁸ Sex is therefore held as sacred and respectable.¹⁹ Failure to respect this, as Gyekye has said, is contemptible, antisocial and as my field data further suggests, is even treasonable. All my chiefly informants (including Christian and Muslim chiefly actors) expressed the fear that lack of societal regulation on homosexuality could lead to misfortune in their territory. As a chiefly informant in the Wenchi Traditional Area presented it, his society has always resisted the practice due to the belief that “[I]f you are the one on the stool, the fear is that our ancestral spirits on it will punish you. You won’t be long on the stool and so we won’t allow it.”²⁰

But in contemporary Akan society, heterosexual intimacy is not merely a religious obligation. I argue here that societal value on heterosexual relationships offers a crucial means of controlling the society and its members. The desire to maintain social cohesion and filial bond is a moving factor for regulating sexual activity. As already noted, legal benefits in the old Akan society were given within the jurisdiction of one’s lineage or community. Expulsion from the clan or the family therefore meant a denial of all rights, an indication of “a virtual sentence of death.”²¹ We therefore get an elaborate understanding of how contemporary social, religious and ethical implications of same-sex partnership continue to take shape. Despite the differing legal orders that one can appeal to in contemporary Ghana, an individual who wishes to live under the protection of the communal society must conform to its sexual decorum. In a society that has increasingly become heterogeneous, however, imposing such traditional values on all members of society most of which do not share with such values creates certain challenges which I later discuss.

¹⁷ Mbiti, *African Religions and Philosophy*, 142–43.

¹⁸ Mbiti, *African Religions and Philosophy*, 144.

¹⁹ Mbiti, *African Religions and Philosophy*, 143–44.

²⁰ Interview with Nana Besseah, December 16, 2014.

²¹ Rattray, *Ashanti Law and Constitution*.

The aforementioned religious and customary conceptions of marriage and sexuality are also as a mechanism to maintain political power. Traditional actors believe that, among sexual improprieties enumerated above, homosexual relationships most infuriate the spirit of the sacred ancestors who would rise up to cause *basa basa* (chaos) in society if this serious offence is not remedied immediately.²² I maintain here that in a society that has struggled to preserve its values since the colonial and postcolonial projects, negative conceptions, maltreatment and stigmatisation of certain sexual offenders provide the mechanism through which society exercises real and symbolic power over its members. Unlike liberal and fully secular societies, issues of homosexuality are not merely a private decision, but rather in “semi-secular” Ghanaian society, homosexuality is conflated with communal, religious and more so, political affairs.

4.3 The Politics of Homosexuality

In discussing the politics of homosexuality in recent times, less attention is paid to how the practice is linked to governmentality, power and influence. Yet, homosexuality reveals an interesting power play between the differing plural legal traditions. To be able to appreciate the recent controversy over homosexuality, we need to interrogate how religious and customary paradigms of sexuality are linked to signification of power, identity and influence which are a source of contestation among the various normative traditions and authorities which I detail in this section.

4.3.1 Traditional Social Control and Homosexuality

Existing accounts depict the moral contradictions and tensions in Akan politics of sexuality. Despite the religious and cultural regulations on marriage and sexuality, according to Robert Lystad, traditionally the Akan society has never been puritanical in its attitudes towards sex; the rules have certainly been broken on frequent basis.²³ In fact, as I have already wondered at the beginning of this chapter, there is no colonial or missionary record of any execution or sanction of same-sex partners. While this does not preclude the claim that the practice existed,²⁴ it makes one wonder the causes of the aggressive stance against homosexuality. In fact, some accounts suggest that widespread lesbianism was practised among Akan women.

²² Rattray, *Religion and Art in Ashanti*, 80.

²³ Lystad, *The Ashanti*, 57.

²⁴ See David F. Greenberg, *The Construction of Homosexuality* (Chicago and London: The University of Chicago Press, 1988), 66.

However, this account and its source have been doubted by my scholarly and well-informed chiefly informants who believe that while homosexuality might have existed, widespread lesbianism was a different matter.²⁵ But Lystand also suggests that the old society's emphasis has been upon regulation of sexual behaviour. For the most part, the society held the view that as Eugenia Herbert maintains, "sexuality is too powerful a force, socially and cosmologically, to leave unregulated."²⁶ The fear of consequences of violating the Akan customary repertoire on the purity of sexuality serves, as the chiefly informant asserts, a basis for regulating what society holds as illicit romance.

Recent aggressive anti-homosexual narratives are, in fact, not only a religious affair but also part of systematic traditional mechanism of governmentality. That is, traditional regulation on sexuality is a systematic means of what society holds as its rightful ordering of citizens. Akyeampong has examined how in the sixteenth century, for example, some Akan communities institutionalised the office of "public women" who were engaged in meeting the sexual needs of unmarried young men.²⁷ While the women involved were first ritualised to avert any spiritual catastrophe in society, the underlying philosophy was that meeting the young men's sexual needs was an important stabilising force in society. Importantly, this system was also meant to prevent any possibility of discord in society especially among the young unmarried men. And so managing tension resulting from sexual desires provided a means for determining which type of sexual relationship must be allowed at that point in time.

Anthropologists have posited that the old Nzema (an Akan group) society practiced *agonwole* ("friendship same-sex marriage") which some argue was a form of homosexual marriage. But as the Italian anthropologist Italo Signorini has explained, this non-sexual intercourse marriage was the noblest expression of friendship in society, indicating the role of sexuality in fostering social harmony and control.²⁸ Among the Nankani of northern Ghana, Rose Mary Amenga-Etego observes that the concept of woman to woman marriage was a

²⁵ Sarpong, interview 24 March 2015; Professor Jean Allman (Washington University), email communication, July 6, 2016; Professor David Owusu-Ansah (James Madison University), email communication, July 6, 2016; Professor Akosua Adoma Perbi (University of Ghana), email communication, July 8, 2016; Professor Emmanuel Acheampong (Harvard), email communication, July 9, 2016.

²⁶ Eugenia W Herbert, *Iron, Gender, and Power: Rituals of Transformations in African Societies* (Bloomington and Indianapolis: Indiana University Press, 1993), 227.

²⁷ Emmanuel Akyeampong, "Sexuality and Prostitution among the Akan of the Gold Coast C. 1650-1950," *Past & Present*, no. 156 (August 1997): 144-73.

²⁸ Signorini, "Agonwole Agyale."

symbolic relationship for the continuous perpetuation of the lineage. Her analysis of this practice rules out any possibility of intimate sexual encounter between the women spouses involved, but it crucially reveals a form of male hegemony in society. Women to women marriage, she argues, was “the last desperate religio-cultural practice employed to reclaim and reinstate the male genealogical descent structure of the people.”²⁹ She, thus, blames Nankani religious and customary rationales for serving as a form of governmentality. Thus the practice was a symbolic marriage aimed at providing a shrewd mechanism for perpetuating a patriarchal and authoritative social and political relationships in Nankani society.

In the early 1930s, a new form of sexual revolution occurred when some Asante chiefs ordered the arrest of all women who were over fifteen years of age and unmarried.³⁰ Several women were locked up until they had found a lover who would pay for their fines. Here too, the time frame is of crucial importance. While the colonial administration suspected monetary interest of the chiefs as a major factor for this action, the chiefs invoked sexual immorality which they cast as the cause of chaos in society. According to Jean Allman: “This chaos, often articulated in the language of moral crisis, in terms that spoke of women’s uncontrollability, of prostitution and venereal disease, was, more than anything, about shifting power relationships. It was chaos engendered by cash and cocoa, by trade and transformation.”³¹ Allman notes that Akan women at the time had gradually become economically independent as a result of capitalist orientation in the form of the cocoa business. These women also declared ownership and authority over their sexual needs. They therefore had little or no need of depending on men apart from, for some, bearing children. By this time, modernisation associated with colonialism was steadily making impact in society. And so, as the discussion below also further details, with a possible conflict of traditional and introduced economic and political values, we see chiefly attempt to use sexuality to bring people who have fallen out of the traditional path on track.

In contemporary times, sexuality continues to provide a clear lens for seeing the tensions between tradition and modernity. Couched in religious and customary narratives,

²⁹ Rose Mary Amenga-Etego, “Marriage without Sex? Same-Sex Marriages and Female Identity among the Nankani of Northern Ghana,” *Ghana Bulletin of Theology*, New Series, 4 (December 2012): 14–37, (quote at 22).

³⁰ Jean Allman, “Rounding Up Spinsters: Gender Chaos and Unmarried Women in Colonial Asante,” *Journal of African History* 37 (1996): 195–214.

³¹ Allman, “Rounding Up Spinsters,” 198.

homosexuality is a traditional political weapon of controlling the modern society. The introduction of colonial and postcolonial political systems has made possible the ongoing diminution of formal chiefly powers. I have at various parts of this work illustrated that with increasing influence of modernisation and social change in chiefly controlled territories, chiefs have variously challenged any change they deem as a threat to their authority.

Homosexuality which is cast as a foreign practice, has therefore become a chiefly tool for asserting their political authority. As a type of traditional sexual deviation, homosexuality is held as an offence against ancestral law. Because the ancestors are held as not just spiritual lawgivers but also owners of the land, homosexuality can be interpreted as a treasonable offence. It is a rebellion against the land and the ancestors whose hegemony was, in the previous society, barely challenged. The case of a divisional chief in the Wenchi Traditional Area mentioned earlier supports this. According to him:

That thing [homosexuality], even in the olden days when our ancestors sat and founded the various towns, the custom did not allow that women should sleep with women, as for that if you were caught, sometimes the two of you were banished from the town. If you are not banished too, they can mulct you or they can demand something like say a ram to pacify the land on which it occurred and the stool and stuffs like that. And so from the times past, we tabooed it; and so it won't happen that because now some are doing it, we will allow it. No.³²

The evangelist who I mentioned as noted for his harsh criticism of traditional religious beliefs and practices, for example, reinforces this traditional notion. He avers that beyond the biblical prohibition of the practice, homosexuality is a taboo. “When *nananom* [the ancestors] came and there was no Bible,” he argues, “they still abhorred it... They will tell you [the homosexual] that you have brought filth to the town... And so that thing that is coming [homosexuality] I believe that *Nananom* [the chiefly authorities] don't condone it the same way we Christians don't condone it.”³³

Elsewhere in Western secular and rationalist society, the claim that homosexual practice brings “filth” will be deemed as laughable and irrational. I contend, however, that in traditional and contemporary Ghana, this claim reflects the importance society attaches to “purity and danger” as related to sexual activities.³⁴ As a modern nation-state which emerged out of former sacred traditional state, this “filth” is understood within the context of an alleged pollution of the sanctity of society. While the approach to remedying this differs, both

³² Interview on December 16, 2016.

³³ Interview at with Evangelist A, 15 February 2015.

³⁴ Mary Douglas, *Purity and Danger: An Analysis of the Concepts of Pollution and Taboo* (London and New York: Routledge, 1966), 3, 54.

traditionalists and Christians view this “filth” as having the potential of bringing *musuo* (misfortune). When discussing the tensions between chiefly and churchly actors, I explained that traditionally *musuo* has to be remedied if the society is to survive the onslaught of modernisation. In discussing the tensions over homosexuality, then, it is important not to belittle the moral panic associated with the alleged “filth” that people hold that homosexuality brings to society. Understanding this religious and customary thinking will help approach homosexual controversy in ways that will be not met by traditionalists and even churchly people as an imposition of introduced values.

To further illustrate how sexuality is used as a political weapon, it is imperative that while homosexuality was for long assumed to be practised even if as a “silent trade,”³⁵ within the public domain and particularly in chiefly controlled lands, little attention was paid to activities and operations of homosexuals. For example, as late as 2003, an Accra Circuit Court jailed four men for engaging in sodomy.³⁶ Very little was heard about this sentence and this did not generate any significant public discussion. By 2004, a gay and lesbian group came to the public domain. It is unclear if the 2003 episode of jailing the four men led to a counter-hegemonic reaction of the “coming out” of this group. The group was reported to have urged the government to, as a matter of urgency, decriminalise the colonially inherited law that prohibits homosexuality in Ghana.³⁷ They were also believed to have threatened to boycott the general elections which was scheduled for December 2004. Again, despite this agitation, little was heard or known about this group and chiefly anxiety and societal interest in homosexual activity was still not significantly felt. In 2008 the homosexual group was again said to have threatened to boycott that year’s general election if something concrete was not done about their plight.³⁸

What we might call “widespread homosexuality,” however, became a major public concern in 2006 when the media reported of the first proposed gay and lesbian conference, scheduled to take place at the Accra International Conference Centre. This proposed conference inspired a general panic. It also generated news headlines and gained attention in public debates and discussions. A radio caller was reported to have warned thus: “Let us wait

³⁵ Dankwa, “‘It’s a Silent Trade’.”

³⁶ “Four Homosexuals Jailed 2 Years Each,” *Daily Graphic*, August 8, 2003.

³⁷ “Ghana’s Gays Organise to Fight British Criminal Law,” *Afrol.com*, August 19, 2004, <http://www.afrol.com/articles/13832>.

³⁸ “Gays To Boycott Elections?,” *Gye Nyame Concord*, May 23, 2008.

until they gather in Accra and we can cut them in pieces.”³⁹ In that same year, the media also heightened the activities of homosexuals when it was reported that Ghanaian children were at risk of abuse by homosexuals especially foreign tourists, reiterating the exotic character of the practice. Citing a study conducted by an NGO Save the Children, the media drew a correlation between poverty and homosexual exploitation of boys. It was reported that 56% of the children surveyed indicated that they have been sexually defiled or engaged in homosexuality for money.⁴⁰

By 2009, homosexuality was a sensitive topic for discussion essentially when a Western Regional Focal Person in HIV/AIDS claimed that over 2,000 registered gays and lesbians were found in the capital of the region, Sekondi-Takoradi.⁴¹ This panic news was taken as a confirmation of the notion that the practice was a threat to the society, albeit the degree to which it threatens and brings *basa* (chaos) in society has still not been proven.

Beyond the anxieties created, homosexual controversies in contemporary Ghana evince an intricate tensions between individual and communal rights. I have said in Chapter one that traditionally, challengers of ancestral law are labelled as *amanbɔfoɔ* (breakers of the traditional state, traitors). That is, these challengers are negatively held and treated as breakers of society; they are wreckers and saboteurs of traditional harmony, law and order. Because of the moral panic that homosexual practice threatens to usurp the authority of the ancestral forces, traditional authorities who represent the ancestors have been actively involved in fighting against homosexuals and their operations in chiefly territories. Some chiefs, irrespective of the supremacy of state civil law structures (which they view also as imposed), resort to proscribed customary sanctions against homosexuals. As a chiefly informant who is also a retired educationist argues, “as an academician and a traditionalist, I abhor it... In the olden days, if there were in society people who were abominable, people who bring troubles, troubles that are unspeakable, *nananom* [the ancestors] will ask the executioners to send that person off.”⁴² The chief insists that homosexuality destroys population and would not sit down for homosexuals to ruin his society, for in his view, there

³⁹ Kwame Essien and Saheed Aderinto, “‘Cutting the Head of the Roaring Monster’: Homosexuality and Repression in Africa,” *African Study Monographs* 30, no. 3 (September 2009): 121–35.

⁴⁰ “‘Fa Wo to Begye Sika’ Syndrome Rises,” *Gye Nyame Concord*, December 11, 2006.

⁴¹ “Thousands Attend First Anti-Gay Protests in Ghana,” *Ghanaweb.com*, June 4, 2010, <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/Thousands-Attend-First-Anti-gay-Protests-In-Ghana-183484>.

⁴² Interview with Nana A.F. January 10, 2015.

will be no people to rule over if that happens. There should be no doubt from this response that traditionalists yearn for the siren atmosphere that characterised the previous society. Homosexuality is perceived as a subversion of this former social condition and homosexuals have been blamed as part of the causes.

In some traditional societies, to avert further the imagined growth of homosexual practices, the ancestral forces, whose land the practice occurs, are invoked to intervene. A chiefly informant, for example, indicates that since news of homosexual increase has become so persistent, in his town, anytime they pour libation, they “pray to *nananom* that they should not bring us people who have such [homosexual] intentions let alone they coming to stay here and practicing it.”⁴³ Due to the fear that homosexuality will bring the wrath of the ancestors upon society, some chiefly actors are even reported to have signalled that they would support any effort to lynch homosexuals in order to “cleanse the community.”⁴⁴

The above concerns are best expressed in the case of a twenty-two year old woman who was sanctioned with banishment by the chiefly authorities of Akyem Achiase in the Eastern region. The young woman was accused of forming a lesbian group and recruiting young girls into the group. The traditional authorities of this town deemed this act as not just a taboo but also a destruction of the future of the recruited group members and the society at large.⁴⁵ By implication, this is a customary treasonable offence hence the banishment, albeit the sanction itself is an infringement on modern national law. This case also exemplifies a complex tension between customary values and individual moral autonomy beneath which lies some traditional political interests.

Beyond resisting homosexuality as a way of safeguarding ancestral tradition, chiefly actors are also protecting their own political power in the modern society. The case of my chiefly informant at the Wenchi Traditional Area cited above echoes a political interest harboured by many traditional authorities. In particular, his fear was that allowing homosexuals to operate in his territory assumes an invitation of ancestral wrath upon the stool and, as he posits, “our ancestral spirits on it [the stool] will punish you. You won’t be long on the stool and so we won’t allow it.”⁴⁶ In other words, for this chiefly informant as for others

⁴³ Interview on December 16, 2013.

⁴⁴ “Angry Tamale Youth, Chief Threaten to Lynch Homosexuals,” *Myjoyonline.com*, March 18, 2013, <http://edition.myjoyonline.com/pages/news/201303/102928.php>.

⁴⁵ Samuel Kyei-Boateng, “No Lesbians Here — Achiase Chief Warns,” *Daily Graphic*, May 30, 2014.

⁴⁶ Interview on December 16, 2013.

like the Achiase traditional authorities, recent news of widespread homosexuality is a modern conspiracy against traditional chiefly authority and power even if by implication, hence the need to resist it.

Traditional belief that homosexuality undermines ancestral law and allegedly threatens to destroy society illustrates the high tensions and levels of emotions associated with anti-homosexual narratives. A shrine informant commenting on the possibility of the Ghanaian parliament introducing a bill to recognise and protect same-sex partnership warned that: “If they go ahead and enact ‘this law,’ then what recently happened in Burkina Faso that made all the parliamentarians run away leaving behind their cars will surely happen here in Ghana. If ‘this law’ comes into effect, what will happen in Ghana will not be good.”⁴⁷ He claims that while he would not support any attack on homosexuals in his town if he sees it, the difficulty, he said, will be how to prove that he saw it. Emotive concerns such as this support the claim that despite Ghana’s adoption of secular modernity, traditional religious and customary notions of sexuality still influence certain legal and political decisions and narratives.

4.3.2 Churchly Actors and Politicisation of Homosexuality

Political interest in resisting homosexual relationships is also manifest in Christianity. It is important to understand that by the end of the last century, homosexual topics were less relevant to African Christian teachings on sexuality. This was primarily because its unacceptability was a taken-for-granted phenomenon.⁴⁸ With the growth of pentecostalism, there has been a rising presence of public engagement and churchly actors have generally tended “to mobilise political energies around the topic.”⁴⁹ I have already pointed out in the Introduction to this thesis that the religion-law relationship in contemporary Ghanaian is particularly manifest in how pervasive the voices of religious actors are in public and political domain, even influencing fundamental decisions in regard to law and national security. In this section, I examine how churchly actors issuing public statements about topics of homosexuality has become a politically expedient situation. In the first place, I discuss how

⁴⁷ Interview with A.T. at Tanoboase, March 8, 2015. The Burkinabe parliament was set ablaze following the decision to amend the country’s Constitution to allow President Blaise Compaore to extend his 27 year term in office. For details see, “Burkina Faso Parliament Set Ablaze,” *Bbc.com*, October 30, 2014, <http://www.bbc.com/news/world-africa-29831262>.

⁴⁸ Matthews A. Ojo, “Sexuality, Marriage and Piety among Charismatics in Nigeria,” *Religion* 27 (1997): 65–79.

⁴⁹ van Klinken and Chitando, “Introduction,” 4, 7.

homosexuality has become a means of the churches in Ghana to assert their moral authority over their external partners and also examine the tensions associated with it. In the second place, I discuss how controversies over homosexual issues become a platform for proselytization. More pointedly, I discuss the way that churches in contemporary Ghana compete not only for membership but also significant political leverage using homosexual narratives as a key starting point.

Parallel account of traditional notion that homosexuality is a “filth” and its implications are found in Christianity too, and indeed the term itself was used by a churchly actor to defend traditional view on sexuality. Pentecostals, as already noted, desire to create a new society different from the old society which is cast as an abode of ancestral curses and vessels of demonic attack. According to my evangelist informant cited earlier, homosexuality is a sin and a demonic activity which his church does not condone. Because of this, homosexuals found in this church, he said, will be ostracised, for as he explained, if such people “have taken the path of the devil then they should go and follow him.”⁵⁰ The notion of sin, impurity and “filth,” in this context, homosexuality as used by churchly actors, is cast as a hindrance to the construction an ideal society. According to van Klinken, pentecostal notion of nationalism is premised on the view that “sexual purity of the nation is believed to be under the threat of cosmic forces of evil.”⁵¹ He notes that defending this purity, then, becomes a religious obligation in pentecostalism. In other words, pentecostal moral salience in the public space is inspired by their political theology.⁵² Eventually, this moral salience leads to a sort of political spirituality⁵³ which in some cases bring about tension. Political and economic realities are given spiritual dimension and interpretations in which homosexuals are accused. Because the notion of homosexual “filth” is deemed as obstructing divine blessing of a nation, homosexuals are linked with people of Sodom and Gomorrah.

While homosexuality was originally not an issue of major concern, at the turn of the twenty-first century, its politicisation as a reaction to demands for equal treatment and the need to demarcate identity made it a matter of public interest. Once it gained public political

⁵⁰ Interview of February 15, 2015.

⁵¹ Adriaan van Klinken, “Christianity and Same-Sex Relationships in Africa,” in *The Routledge Companion to Christianity in Africa*, ed. Elias Kifon Bongmba (London and New York: Routledge, 2016), 493.

⁵² Yong, *In the Days of Caesar*, 14.

⁵³ Ruth Marshall, *Political Spiritualities: The Pentecostal Revolution in Nigeria* (Chicago and London: The University of Chicago Press, 2009); van Klinken, “Christianity and Same-Sex Relationships,” 493.

attention, churchly leaders found the need to wage into the debate. For example, following the persistent media report on homosexual activities, the Christian Council of Ghana in 2011 condemned the practice, cautioning the government not to endorse what they call a “detestable and abominable act” since endorsing it will bring the wrath of God and “the consequences will be unbearable” for the nation.⁵⁴ The question of interest here is why it became an issue of concern to churchly leaders, which I discuss below.

First, churchly engagement in homosexual politics is a result of transnational religious and political power-play. In Chapter two, I brought up the idea that churchly leaders are relevant for transnational flow of social welfare and political mobilisation. In matters of homosexuality, a different engagement exists. Churchly engagement in what started as a political issue was a means of the local churches asserting their authority and also cutting certain ideological ties with the churches in the global North. In Ghana, this form of churchly ideological decolonisation finds its expression in the tensions between the Presbyterian Church of Ghana and its partner in the US.⁵⁵ Following the passage of the same-sex legislation in the US, the Presbyterian Church of Ghana announced that it has severed ties with the Presbyterian Church of the United States of America. It also called for the withdrawal of its New York based pastor, a former moderator of the Presbyterian Church of Ghana. This situation brought acrimonious tension between him and then moderator whom the former moderator accused of fuelling tensions.⁵⁶ Following a series of tensions between the two parties, the US-based former moderator announced his resignation from the Presbyterian Church of Ghana.⁵⁷ Some have accused the then moderator, Reverend Professor Emmanuel Martey of hiding behind homosexuality to further a political agenda by eliminating people perceived as a threat to his position.⁵⁸ At the core of this tension, however, is how homosexuality is used as a means to assert domestic churchly authority over

⁵⁴ Ghana New Agency, “Christian Council Joins Calls to Condemn Homosexuality in Ghana,” *Ghananewsagency.org*, July 19, 2011, <http://www.ghananewsagency.org/details/Social/Christian-Council-joins-calls-to-condemn-homosexuality-in-Ghana/?ci=4&ai=31187>.

⁵⁵ Akosua Asiedua Akuffo, “Tension in Presbyterian Church over Homosexuality,” *Myjoyonline.com*, October 8, 2015, <http://www.myjoyonline.com/news/2015/October-8th/tension-in-presbyterian-church-over-homosexuality.php>.

⁵⁶ “Presby Withdraws US Pastor over Gay,” *Daily Guide*, October 8, 2015.

⁵⁷ Debrah Fynn, “Immediate Past Moderator Resigns from Presby Church,” *Daily Graphic*, April 16, 2016.

⁵⁸ Dorcas Abedu-Kennedy, “We Won’t Allow Prof Martey to Destroy Presby Churches – US Moderator,” *Adomonline.com*, October 23, 2015, <http://ghana-news.adomonline.com/news/2015/October-23rd/we-wont-allow-prof-martey-to-destroy-presby-churches-us-moderator.php>.

international partners whose ideals on sexuality are held as inconsistent with domestic sexual orientation.

Some churchly leaders have expressed the fear that the infiltration of Western cultural practices such as homosexuality into traditional Ghanaian familial values is a tacit limitation of the family size and the usurping of the sovereignty of God endowed with the family unit.⁵⁹ Here, the link between homosexuality and religious and cultural sovereignty is significant. Elsewhere Morris has argued that if sovereignty does not lie easily or simply in legal norms but rather “in something more fluid than this conventional wisdom, something that is covert and only exposed during times of emergency, then we have excellent grounds for reconsidering sovereignty.”⁶⁰ In the same vein, we see an overlapping exercise of control over sexual morality between national and international actors. In the minds of Ghanaian churchly leaders, once the nation as a state party to international human rights protocols does not have full control over its values on sexuality, then there are excellent grounds to reconsider Ghana’s sovereignty, hence the need to invoke the sovereignty of God.

Second, churchly actors’ engagement in anti-homosexual campaigns which are clear legal and human rights issues are seen not only as transnational religious tensions but also internally, it is a proselytising strategy. With a few exceptions especially then Moderator of the Presbyterian Church of Ghana just cited most of the ardent and open individual condemnation of homosexual practices often come from pentecostal pastor-prophets. It is difficult to pin the reasons to a particular determinant but one explanation is that as part of their proselytising approach, because most of the pentecostal actors belong to independent Christian organisations, it is easier for them to freely voice their opposition than those under the institutionalised churches. As an evangelist explains:

My fellow brothers know the truth [about the “sin” of homosexuality] but they are afraid to come up with it. They want the message and not the cross. They don’t want people to speak against them. All the things I say they know it. Some of them even call and praise me. They explain to me that because of the nature of their church, if they say certain things in public, they will be dismissed or transferred... ‘that their church has policies; they said they shouldn’t say this or shouldn’t say that...’ So it’s about fear. And they are the people making the work difficult for me.”⁶¹

⁵⁹ “Same-Sex Marriage Is a Threat to Family Life - Catholic Bishop,” April 8, 2014, <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/Same-sex-marriage-is-a-threat-to-family-life-Catholic-Bishop-305593>.

⁶⁰ Morris, “The End of Multiculturalism?,” 225.

⁶¹ Interview on February 15, 2015.

Beyond being a proselytising issue, churchly anti-homosexuality rhetoric also has a political dimension. Ezra Chitando and Adriaan van Klinken suggest that churchly active engagement in the politicisation of homosexuality is connected to the reality of the aggressive competition in the “religious market” among Christians and in Nigeria and elsewhere, between Muslims and Christians.⁶² In Ghana, the timing of churchly anti-homosexual public statements, as noted, is considerable. Gifford has noted that by the beginning of the Fourth Republic, the two most significant religious bodies in Ghana noted for their vociferous public statements were the Catholic Bishops and the Christian Council of Ghana.⁶³ The fact that public anti-homosexual narratives coincided with the active pentecostal engagement in the public sphere provides crucial perspectives into appreciating the role Christianity particularly pentecostalism plays in the politics of homosexuality. For example, in 2011, in the face of heated public indignation about widespread homosexual activity, the Western Regional Network of Churches organised a demonstration against the practice. They submitted a petition to the Regional Minister urging the government to come up openly to condemn homosexuality.⁶⁴

4.3.3 State Politicisation of Homosexuality

In a plural legal society such as contemporary Ghana, the state’s response to religious and social anxieties over same-sex hysteria enables us to contextualise the normative challenges associated with addressing tensions between universal human rights standards and domestic cultural values on sexuality. It has already been said that the Fourth Republican regime emphasises on individual moral sovereignty. The new state also promotes the flourishing of the individual without constraints of religious, customary and social obligations, including marriage and sexuality. From the above controversies, it is apparent how homosexual narratives are central to the intricate conflict of normative values and legal norms. We see a conflict between the state’s responsibility to protect individual sexual sovereignty and personal self-determination; we also see state’s respect for the religious and customary values of its populations. Achieving this task involves some normative challenges including how it ought to maintain the balance of power between individual and communal autonomy. In this

⁶² van Klinken and Chitando, “Introduction,” 6.

⁶³ Gifford, *African Christianity*, 69.

⁶⁴ Ghana New Agency, “Christians Demonstrate against Homosexuality and Lesbianism,” *Ghananewsagency.org*, July 16, 2016, <http://www.ghananewsagency.org/details/Social/Christians-demonstrate-against-homosexuality-and-lesbianism/?ci=4&ai=31115>.

section, therefore, I examine the political ideological use of religious and customary notion of sexuality. Despite the imposed supremacy and centrality of the Ghanaian nation-state, its civil law structures are not enough to resist the strong impact of external forces. As such, it invokes religious and customary ideals to reject external demands to legalise same-sex. I examine the religion-state relationship by showing how the state relies on its domestic sources of plural legal orders and authorities to assert its sovereignty over external interventions.

In the face of the State of Ghana's inadequacy in meeting certain international human rights standards, religious and customary systems and authorities are deployed to resist external pressure. As a secular state "inextricably bound up with religion and the spirit world,"⁶⁵ the State of Ghana largely depends on religion-based normative systems and authorities to resist external influences regarding homosexuality. Political actors insist that demands to conform to universal sexual morality would systematically weaken Ghana's cultural and social peculiarity. On March 2014, for example, a retired Ghanaian professor who was also a former second deputy Speaker of Parliament, Professor Mike Oquaye, lamented what he said was a clear attempt by Western liberal states, in collaboration with the World Bank, in "ganging up in a collective action against Africa."⁶⁶ The political historian noted that international intimidation resulting from legalisation of same-sex was very serious and urged African nations to come out with a united front if societal ideas, beliefs, values and practices "which form the cornerstone of our acculturation should not be undermined."⁶⁷ Clearly the professor and political actor was not invoking Ghana's secular legal norms which cannot stand the influences of legal universalism. As a result, he appealed to the religious and cultural values of Ghana which have much purchase at the local and national level.

Homosexual practice has in the last couple of years become a political arena of ideological contests between liberal and non-liberal nation-states. International aid to end poverty and other social challenges in Africa have been tied to the receiving country's adherence to basic political and human rights standards. On February 2014, for example, the World Bank announced the suspension of a \$90 million in loans aimed at improving the

⁶⁵ John S. Pobee, "Religion and Politics in Ghana: A Case Study of the Acheampong Era 1972-1978" (An Inter-Faculty Lecture on Thursday 10 January, 1980, Accra: Ghana Universities Press, 1992), 1.

⁶⁶ Mike Oquaye, "Homosexuality and Lesbianism: A Global Threat to Africa," *News Ghana*, March 23, 2014, <http://newsghana.com.gh/homosexuality-lesbianism-global-threat-africa/>.

⁶⁷ Oquaye, "Homosexuality and Lesbianism."

Ugandan health sector following the passage of the country's 2014 Anti-Homosexual Act. Countries such as Denmark, The Netherlands and Norway also followed suit to freeze all aid to the Ugandan government.⁶⁸ This morally controversial decision was preceded by similar demands in November 2011 at the Commonwealth Heads of Government Meeting in Perth, Australia. During this meeting, then British Prime Minister David Cameron announced that Britain was considering cutting aid to countries which failed to respect gay rights.

While external conditionalities such as the above have since the 1990s led to several economic and political reforms including ongoing democratisation of the continent, there has also been some residual effects in terms of the religious and customary tensions. The demand for the adherence to liberal ideals such as the legalisation of same-sex marriage, problematizes the dominant struggles between the West and post-colonised states such as Ghana. The refusal on the part of some African states to yield to this external demand has led to mischaracterisations such as homophobic Africa.⁶⁹ But more important for this discussion is how local values regarding sexuality become directly involved with universal legal contest. Not only is the subjugation of the human body and sexuality a tool for maintaining state power in the Foucauldian sense, but through the politics of homosexuality, state's normative legitimacy can and does become a stage for political manipulation.

A major concern regarding this demand was that once the legalisation of same-sex partnership is tied to certain requirements especially before securing external help, then it creates a dependency-syndrome between the rich, liberal, donor countries and the needy, non-liberal, recipient nations. As Professor Oquaye laments, conditions set by donor states are said to undermine local ideals which are held as core identifiers of the States' uniqueness.

To the extent that liberalism evolved within particular enabling historical and political contexts,⁷⁰ conditions set by liberal states and organisations in connection with same-sex partnership raise further tensions between local values, national and international human rights norms. In strong liberal societies, individual actors have the power and the means of challenging the state. Individual agency, as explained in Chapter three, works in an entirely different context in traditional societies. In Ghana and most of Africa, because of the

⁶⁸ Mike Pflanz, "Keep Your Gays and Keep Your Aid, Uganda Tells the West," *The Telegraph*, February 28, 2014.

⁶⁹ Patrick Awondo, Peter Geschiere, and Graeme Reid, "Homophobic Africa? Toward a More Nuanced View," *African Studies Review* 35, no. 3 (December 2012): 145–68.

⁷⁰ Nikolas Rose, *Powers of Freedom: Reframing Political Thought* (Cambridge: Cambridge University Press, 1999), 139.

widespread religious and customary influences, the government acting on behalf of the society and its people has its own exceptional challenges. State agents very often refer to social norms and values, which are references to traditional and religious values. Although such a simple deferral to religion is a result of the absence of distinctive state position on same-sex marriage, the claim that religion functions as the foundational basis for certain legal and human rights actions and discourses in Ghana cannot be missed out. Traditional and religious values influence individual actions and public debates and decisions in matters of matters of national and universal significance.

In view of this, political actors have persistently invoked this reality to make a unique case against legalising homosexuality. For example, on July 2015 when the US President, Barack Obama visited Kenya, he cautioned African political and religious leaders on the need to safeguard sexual minorities. In response, the Kenyan President Uhuru Kenyatta reminded President Obama that it is very difficult to impose on people that which they themselves do not accept. In Kenya, like most of Africa, he said, “gay rights is really a non-issue,”⁷¹ thus, giving credence to the earlier position that homosexuality was originally not an issue of public concern. He posited that unlike advanced countries like the US, Kenya’s immediate day-to-day needs were health issues, infrastructure, roads, women empowerment, and education. The Kenyan President emphasised that “maybe once, like you [the US], [we] have overcome some of these challenges, we can begin to look at other ones, but as of now the fact remains that this issue is not really an issue that is at the foremost minds of Kenyans and that is a fact.”⁷² While President Kenyatta couched his rejection of President Obama’s demand in a crafty secular argument, beneath it lies religious and cultural ideals of a sovereign Kenyan state, which as he said, are different from those of liberal countries like the US.

Confronted with this reality, many African governments very often invoke religious and customary polemics in asserting political sovereignty. An imminent threat of societal destruction due to homosexuality, thus, becomes a potent political and moral power through which the State’s “exclusive control culture”⁷³ is maintained. But, at the same time, if indeed the State’s legal authority and national sovereignty depend on its ability to control its

⁷¹ Kiran Moodley, “Kenya President Uhuru Kenyatta Clashes with President Obama on LGBT Equality: ‘Gay Rights Is Really a Non-Issue,’” *Independent*, July 27, 2015, <http://www.independent.co.uk/news/people/kenya-president-uhuru-kenyatta-clashes-with-president-obama-on-lgbt-equality-gay-rights-is-really-a-10418267.html>.

⁷² Moodley, “‘Gay Rights Is Really a Non-Issue.’”

⁷³ Stanley Cohen, *Folk Devils and Moral Panic: The Creation of Mods and Rockers* (London and New York: Routledge, 2002), 66.

populations and institutions,⁷⁴ then anxieties over the eminent destruction of societal foundation as a result of homosexuality becomes a technique of maintaining state sovereignty, even if only by implication. For example, subsequent to the demand made by David Cameron cited above, then President of Ghana, Professor John Evans Atta Mills, rejected this condition by explicitly invoking national sovereignty, cultural values and societal norms. The law professor argued that David Cameron, like any other political leader, was entitled to opinions that reflected the norms and ideals of his society. Yet, he argued, neither Cameron nor any other leader had:

the right to direct other sovereign nation as to what they should do especially where their societal norms and ideals are different from those which exist in Prime Minister Cameron's society. I, as president of this nation, will never initiate or support any attempt to legalise homosexuality in Ghana. As a government, we will abide by the principles enshrined in our Constitution, which Constitution is supreme.⁷⁵

This coheres with my claim that religious convictions and customary values and ideals furnish the nation-state with the solidarity it needs to assert its full sovereignty. The State of Ghana, as elsewhere, no longer has absolute authority and exclusive jurisdiction over its borders, its laws and its population. As a state party to many of international protocols and treaties, its control over matters of policies, sovereignty, legal authority and influence is not absolute, but fragmented. Abuses of power and violations of human rights are not merely breaches peculiar to a state. As a state party, international communities can at any point in time call it to account for such abuses. State parties' human rights records and commitments are also readily available to outsiders and are constantly monitored by special rapporteurs who are representatives of international organisations. With this in mind, Ghana's claim to territorial sovereignty alone is not enough to insulate it from issues of gay rights. Due to high societal opposition to the practice, it is understandable why President Mills would link Ghana's sovereignty with the sanctity society attaches to sexuality as extra basis for his insistence on Ghana's position on same-sex relationship.

While Ghana's Constitution and other statutory laws protect individual freedom including sexual rights, we also see how religious-customary values play an important role in deciding which rights are to be guaranteed and which ones are to be repressed for the survival of the nation-state. We get an affirmation that while contemporary Ghana is constitutionally

⁷⁴ Cohen, *Globalization and Sovereignty*, 68.

⁷⁵ "Ghana Will Not Legalise Homosexuality," youtube.com, (November 4, 2011), <https://www.youtube.com/watch?v=px0XQwmiQ68>.

secular, because of the saturated nature of religion and custom, at any point in time it holds fit, it can curtail individual rights under domestic and international human rights if it feels these systems are threatened.

State agents conception of partners of same-sex relationships as sexual deviants is akin to those held by traditional and churchly leaders. They perceive homosexual practice as constituting a menace to social norms and traditional values. While such dangers are decidedly imagined or exaggerated, they nonetheless become basis for limiting certain individual autonomy. Homosexuals are blamed for economic and other failures of the country.⁷⁶ As the Millian harm principle proposes, the only justifiable basis for which intervention is needed is to prevent harm to others.⁷⁷ We see a similar argument made by President Mills, namely that Ghana as a sovereign nation-state will not accept any aid if that will eventually destroy (harm) the very society that the aid is meant to improve.⁷⁸ Just as chiefly and churchly actors, the State couches homosexuality as harming the moral community. Intriguingly, while it is still not clear what the nature of harm or “destruction” homosexuals bring to society, the fear of this “harm” has been used to resist external pressure and influence in connection with homosexual rights, raising further challenges for the enforcement of national laws and the development and human rights in Ghana.

4.4 Law, Human Rights and Homosexuality

I have so far looked at the religious and political dimensions of tensions taking into consideration their historical foundations. In this section, I focus generally on analysing the depth to which religious and customary rejection of homosexuality conflates with legal and human rights concerns. The first part of the discussion assesses the normative and practical legal challenges of anti-homosexual narratives, giving a brief historicity of the national law regarding homosexual relationship. In the second part, I look at the human rights implications of anti-homosexual narratives in contemporary Ghana. The very idea of Ghana having more than one legal norm regarding sexuality creates certain contemporary human rights challenges. According to Merry, for example, in recent times, the imposition and negotiation

⁷⁶ “NDC Guru Blames Economic Woes on Pro-Gay Saboteurs,” *Ghanaweb.com*, July 3, 2014, <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/NDC-Guru-blames-economic-woes-on-pro-gay-saboteurs-315360>.

⁷⁷ John Stuart Mill, *On Liberty* (Ontario: Batoche Books, 2001), 13.

⁷⁸ “Ghana Will Not Legalise Homosexuality.”

of international human rights regimes take place against a backdrop of global inequality.⁷⁹ As I show below, the controversy over same-sex partnership has become a platform where certain liberal democratic ideals are superimposed into postcolonial societies. The result of situations in which the different legal worlds overlap is that balancing the expectations of the various legal traditions in tensions creates certain normative challenges for a secular state with very high levels of religiosity.⁸⁰ Details of suggestions for dealing with such situations will be given later in Chapter five.

In this section, we will see that not only are religion and customary arguments irrational to modern legal mind but state law itself which is held as rational and neutral has also created confusion and ambiguity. Conscious of the inconsistencies, state actors in recent times give national law legitimacy by supporting it with religious and customary values. Later in my discussion on normative implications in Chapter five, I show how despite the tensions resulting from the intersection of the various legal safeguards, these are also fundamental to transforming social norm regarding sexuality.

4.4.1 Homosexuality and the Law

Just as there are various and complicated forms of marriage in society, so is state law regarding sexuality is confusing. A look at the history of the law regarding marriage in Ghana shows that tensions over legal conceptions of marriage and sexuality also occurred with the introduction of plural legal orders associated with the arrival of monotheistic Islam and Christianity.⁸¹ Mission Christianity in particular came with its own case law on marriage, divorce, property and inheritance. Throughout its early encounter with the indigenous people, the right of how many to marry – and not whom to marry – was a fundamental issue that mission Christianity had to deal with. Some mission churches, for example, had clearly spelt out plans for husbands who die intestate, a situation leading both to conflict within the church and to confusion among converts and their non-Christian relatives. Notwithstanding the social prestige and fame associated with marrying the Christian way, many began to revolt and question if Christian marriage provided something extra which customary marriage could

⁷⁹ Merry, “Human Rights and Transnational Culture,” 55.

⁸⁰ See for example, International Council on Human Rights Policy, “When Legal Worlds Overlap,” 36.

⁸¹ Kwame Opoku, *The Law of Marriage in Ghana: A Study in Legal Pluralism* (Frankfurt am Main: Alfred Metzner Verlag GmbH, 1976).

not account for.⁸² As church marriage prevented the possibility of a second or plural marriage, most people found it unappealing. Men living in plural marriages were denied sacraments and the full rights of church membership.⁸³

Particularly in the latter part of the nineteenth century, the traditional structures of marriage changed considerably under imported legal systems. British colonial administration introduced laws that were inapplicable to matrimonial causes of society. The first major legal assault on indigenous marriage was through the promulgation of the Marriage Ordinance of 1884 (the Marriage Ordinance). Under this Ordinance, a tactful legal differentiation between marriage as a religious cultural obligation and a somewhat non-religious, private affair resulted. The religious and customary significance of marriage that had always bonded couples and their respective wider lineages together was reified. The multiplicity of traditional marriage also came to be undermined and heterosexual monogamy became a prototype of conjugal relationship under the colonial regime.⁸⁴ Owing to the confusion resulting from the imported law on marriage, conflict and misunderstanding resulted between the colonial administration and the local people, on the one hand, and the colonial government and the mission Christianity on the other hand. It is interesting that just as the controversy that confronted mission Christianity, the right of how many to marry – and not whom to marry – became a major legal preoccupation of the colonial state.

Under the Marriage Ordinance, for example, marriages could be contracted according to traditional custom in a Christian church, and/or the Marriage Ordinance. Although the Ordinance was enacted after consultation with the main religious bodies, in December 1886, the Gold Coast Methodist, for example, called it a “most impractical measure.”⁸⁵ Thus, the Ordinance was seen as an opposition of external notion of sexuality as it undermined dominant traditional conceptions and practice of marriage. For example, a woman, traditionally considered as a wife, under the imported legal norm, was later seen as a concubine, a situation that put shame and embarrassment on her and her family.

⁸² Lystad, *The Ashanti*, 63.

⁸³ Rev. Dennis Kemp, *Nine Years at the Gold Coast* (London: Macmillan and Co. Ltd, 1898), 52.

⁸⁴ Opoku, *The Law of Marriage in Ghana*.

⁸⁵ Kimble, *A Political History of Ghana*, 158. Under the new independent state, most Christian leaders also expressed dissatisfaction over the introduction of the Marriage, Divorce and Inheritance Bill, 1961. In a comment on this issue, the Presbyterian Church of Ghana, for example, expressed the worry that this legal instrument complicated the already existing ecclesia laws particularly in cases that involve unregistered wives. See “Comments on the White Paper on Marriage, Divorce and Inheritance Submitted on Behalf of the Presbyterian Church of Ghana,” typescript (Accra, June 9, 1961).

Post-independence narratives on marriage which sprang from monotheistic Islamic and Christian religions as well as British legal understandings of conjugal relationship continue to be a source of conflict in society.⁸⁶ By the time of independence, marriage had gradually become desacralized and had become a common law right, although most people still lived under traditional practices and notions of marriage. Post-independence Constitutions have continued to guarantee the right of marriage. At the moment, three forms of marriage are recognised and registrable. Under the Customary Marriage and Divorce (Registration) Law 1985, (PNDC Law 112), marriages celebrated in accordance with the custom and practices of the various ethnic groups are recognised. The second type is the Marriage Ordinance, 1951 (CAP 127), often referred to as the Christian Marriage. Influenced by European religious norms and common law, this type of marriage is strictly monogamous. The third type is the Marriage of the Mohammedans Ordinance, 1951 (CAP 129).

These different sources of marriage law raise some normative challenges. First, in all these, no proper definition of what constitutes marriage has been given. One of the earliest attempted definitions of marriage was offered by Mensah Sarbah who writing in 1897 defines marriage from the dominant Euro-Christian notion of “the union of a man to a woman to live as husband and wife for life.”⁸⁷ The challenge regarding recent homosexual debates is that current laws of Ghana do not have any general definitions of the terms “marriage,” “husband” and “wife;” only ad hoc definitions exist, thereby conceptually restricting these words to Western heterosexual and monogamy or Victorian Christian unions.⁸⁸ And so, using religion and custom-based definition in a secular and legally plural nation-state raises legal concerns. For example, as noted already, in 2004, a group of homosexual was reported to have urged the government to, as a matter of urgency, decriminalise the colonially inherited law, with its Christian roots, that prohibits homosexuality in Ghana.⁸⁹ This group, as mentioned earlier, also on two occasions threatened to boycott the general elections of 2004 and 2008 if their demands were not met.

The second legal challenge in recent times is that there is no known colonial document about marriage as a fundamental right. It is understandable that, as Evan

⁸⁶ Opoku, *The Law of Marriage in Ghana*, 40–41.

⁸⁷ Sarbah, *Fanti Customary Laws*, 45.

⁸⁸ Anthony Allott, *Essays in African Law with Special Reference to the Law of Ghana* (London: Butterworth & Co. [Publishers] Ltd, 1960), 210.

⁸⁹ “Ghana’s Gays Organise to Fight British Criminal Law.”

Gerstmann explains, throughout much of the nineteenth century, “the Court declined to call marriage a fundamental right because the concept of unenumerated fundamental rights did not exist at all until the very end of that century.”⁹⁰ Basing anti-homosexual arguments on religious and customary norms alone, therefore, raises legal tensions as was the case of the demand of the gay and lesbian group just mentioned.

The third challenge is that existing provision regarding sexual relationship in the Criminal Code is legally elusive and nebulous, creating conceptual and practical legal problems. Conceptually, under this Code, it is a crime to engage in an “unnatural carnal knowledge.” The definition of what it means to engage in “unnatural carnal knowledge” creates further confusions. Section 104 (2) of the Code provides that an unnatural carnal knowledge “is sexual intercourse with a person in an unnatural manner.” This Section of the Code follows both old and existing traditional, colonial, Islamic and Christian trajectory, namely, conjugal relationship must involve a man and a woman. But in a society that is gradually becoming conscious of legal universalism, the establishment of what constitutes an “unnatural carnal knowledge,” however, is unclear and also practically difficult to sustain in court. According to Section 99 of the Code, “unnatural carnal knowledge shall be deemed complete upon proof of the least degree of penetration.” This clearly assumes a male-to-male sexual intercourse although the law has been applied to cases of both sexes. For example, in a case that gained national interest, an Accra Circuit Court charged a senior medical doctor with defiling an under-sixteen year old boy contrary to Section 101(2). This section provides that: “Whoever naturally or unnaturally carnally knows any child under sixteen years of age, whether with or without his or her consent commits an offence and shall be liable on summary conviction to imprisonment for a term of not less than seven years and not more than twenty-five years.” The doctor was also charged with another count of engaging in an unnatural carnal knowledge.

This case has interesting legal significance for some reasons. People’s interest in the case can largely be attributed to the social and professional standing of the accused, whether or not he will be treated like any ordinary person. Also, the media broke the news at a time that there was mounting pressure on the State to declare its stance on same-sex marriage. Significantly, the case was deemed to be a major test case for the state’s interpretation and enforcement of the provision of the Criminal Code regarding “unnatural carnal knowledge.”

⁹⁰ Evan Gerstmann, *Same-Sex Marriage and the Constitution*, Second Edition (Cambridge: Cambridge University Press, 2008), 81.

In the end the doctor was found guilty of defilement and was sentenced to twenty-five years imprisonment.⁹¹ It is arguable that the presiding judge tacitly focused on the first count, evading the second charge which evokes so much local and international controversy especially as its unclear interpretation has become a major concern for many pro-gay activists. The judge was reported to have stated that “it was unnecessary for the prosecution to have preferred the charge of unnatural carnal knowledge against the convict, indicating that the offence could not have been sustained with defilement.”⁹²

The “unnatural carnal knowledge” provision may aptly be interpreted to equally involve heterosexual anal sexual intercourse and sexual relations between two females, on condition that a degree of penetration is established. As just noted, there have been rare occasions where people have been charged with this provision especially in the case of two women. On February 2016, for example, a woman was charged with engaging in unnatural carnal knowledge when she was alleged to have inserted a dildo into the private part of another woman after she reportedly intoxicated her victim with vodka beer and other liquors.⁹³ These notwithstanding, controversies and challenges associated with the law are ongoing subjects of investigation for legal functionaries.

Remarkably, agitations from Ghanaians over the activities of homosexuals also become a basis for state enforcement of its existing laws on sexuality. Pursuant to the report of the 2006 planned gay conference mentioned above, the State denied the group’s application for the conference arguing that because homosexuality is outlawed in Ghana, giving them a permit was a contravention of state law. The State further indicated its readiness to curb the movement and its activities. Kwamena Bartels, then Minister of Information and National Orientation, for example, made the official statement regarding the conference. He indicated that “the government does not and shall not condone any activity which violently offends the culture, morality and heritage of the entire people of Ghana.”⁹⁴ Here we see state capitulation to the protection of religious and customary heritage as basis for the deployment of statutory laws.

⁹¹ Seth J. Bokpe, “Ali-Gabass Begins 25-Year Jail Term,” *Daily Graphic*, July 14, 2015.

⁹² Jeffrey De-Graft Johnson, “Doctor Jailed 25 Years,” *Daily Guide*, July 14, 2015.

⁹³ “Woman Charged for Inserting Artificial Penis into Co-Tenant’s Vagina,” *The Chronicle*, February 3, 2016.

⁹⁴ Wendy Sawatzky, “No Gay and Lesbian Conference Was Planned,” *The Chronicle*, September 20, 2006.

From this, we see a religion-law relationship in which homosexuality becomes not only a legal issue, but more significantly, a religious and customary matter. There are occasions where individual state actors have invoked the law to resist homosexual activity of all of which conflate with religious values and protection of cultural heritage. For example, on 20 July 2011 following demonstrations against homosexuals in the Sekondi-Takoradi metropolis, the Western Regional Minister warned that state security agents would be used to quell any flourishing of homosexual activities in the region. I am well aware of the challenge of determining the sense in which individual politicians' statements are indications of state response. There is no denying the fact that it is one thing for a state's statement banning homosexuality, and another thing for an individual member of government's speech or statement banning homosexual practice. The real challenge here is who says what for the government and under what principle to determine the degree to which we can say the latter's statement or speech reflects the former's view. In other words, the crucial question is "who decides?" However, because gay rights are human rights, Diane Orentlicher's *substantive accommodation* approach becomes useful here.⁹⁵ This approach assumes that in human rights discourse, statements and actions of leading state actors can be expanded to reflect tacit state response.

The Minister's response may very well reflect his convictions of the legal authority of state law hence his reference to it. The fact that there is existing law regulating homosexuality and the Minister invoked it means that ideally in a state that professes to be secular there will be nothing extraordinary about it. However, what is curious here for an analysis of religion-law relationship is the fact that this response came in reaction to pressure from religious groups.

As homosexuality is largely a religious-customary issue, some state actors have expressed the fear that failure to invoke state legal norms to regulate it would lead to the destruction of society. A former Chairman of the Parliamentary Committee on Legal and Constitutional Affairs, Inusah Fuseini is reputed to have indicated his readiness to oppose any bill tabled in parliament aimed at legitimising homosexuality in Ghana. This is because, according to him, homosexuals are using their sexual "organs for inappropriate activities and this should not be allowed."⁹⁶ Just as some chiefs fear that homosexual growth means in the

⁹⁵ Diane F. Orentlicher, "Relativism and Religion," ed. Michael Ignatieff (Princeton and Oxford: Princeton University Press, 2001), 143.

⁹⁶ "Homosexuals Could Soon Be Lynched in Ghana – MP Warns," *Ghanaweb.com*, June 17, 2011, <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=211415>.

future there be no subjects to rule over, some high profile political actors have also expressed support for the use of state legal norms to curb homosexual activities because, in their view, the growth of homosexuality is tantamount to committing genocide. In 2011, for instance, a former Deputy Minister of Environment, Science and Technology, Sam P. Yalley reportedly argued that because homosexual partners cannot reproduce on their own, they contribute to a gradual extermination of society for which reason they must be charged with genocide.⁹⁷ This response affirms the traditional value on marriage and procreation. But crucially, it also reveals the manifest role religious and familial ideals play in terms of how state law must be applied. In this case, he insisted on the application of the law governing sexual relationship by indicating that homosexuals must be arrested, charged and punished for this crime (genocide).

In the face of the State's ambivalent legal position on homosexuality, others have echoed the need for a firm and clear state position. An independent presidential candidate, Jacob Osei Yeboah, following persistent media reports on homosexual activities in 2011 emphasised the need for a national referendum to put the confusion to rest once and for all. He argued that the existing statutory law on same-sex relationships is inadequate to resist the strong arm of international law and communities.⁹⁸

In July 2011, David Tetteh Assuming, then Member of Parliament for Shai Osudoku constituency, warned that the State could not safeguard homosexuals from being lynched if they do not desist from their practice. Expressing his opposition to homosexuality, the MP indicated that as "a God-fearing nation and a God-fearing people, let us not joke with this issue and let us not talk about any issue of human rights. This is uncultured, anti-Ghanaian and if care is not taken, these people will face a very tough time in future"⁹⁹ The parliamentarian's signal that homosexuals face a very tough time ahead draws attention to the fact that introduced human rights of homosexuals, and also legal universalism, must not supersede local ideals and the will of the people. What is remarkable here is that in the politics of homosexuality, the human rights of homosexuals are held as not subject to negotiations. Instead, in the minds of those who hold this view, religious and customary values triumph over state laws and international human rights of homosexuals.

⁹⁷ Charge homosexuals with genocide – Sam P. Yalley, 1 September 2011, [ghanaweb.com](http://www.ghanaweb.com/GhanaHomePage/NewsArchive/Charge-homosexuals-with-genocide-Sam-P-Yalley-217622), <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/Charge-homosexuals-with-genocide-Sam-P-Yalley-217622>

⁹⁸ "Presidential Aspirant Calls for Referendum on Sexuality," *The Statesman*, June 15, 2011.

⁹⁹ "Homosexuals Could Soon Be Lynched in Ghana."

4.4.2 Human Rights Challenges

The pervasive influence of religion in Ghanaian public sphere and the inadequacy of state law have made the legalisation of homosexuality a major human rights issue of interest. State-led approaches to addressing the perceived threat of widespread homosexuality betray a disjuncture between its commitment towards preservation of local values and ideas and its responsibility towards international human rights standards. In this section, I examine the nature of legal controversy and human rights issues involved in the politics of homosexuality in Ghana. I assess these human rights challenges in terms of conceptual and practical difficulties including emotional stress, violation of constitutional rights, and physical attacks.

Lack of legal clarity especially on lesbianism, I have contended above, has made it difficult to articulate exactly what Ghana's position is on same-sex partnership although statements of state actors suggest a clear anti-homosexual position. Despite the unclear state position on homosexual relations, Article 17 of Ghana's Constitution guarantees that all persons shall be equal before the law and no person shall be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status. But because of the high religious and customary anxieties associated with homosexuality, same-sex partners have diversely been treated in ways that undermine their basic rights and also challenge state legal legitimacy. The example of the shrine attendant who warned that despite state power to enact laws against his values, the State cannot come and enforce it in his territory calls for a reconsideration of the ways that the rights of same-sex partners are disregarded. I have also mentioned how some chiefly actors use banishment as a means of controlling homosexual activities.

In the new state, homosexuality is no longer solely a religious-customary issue to be left in the hands of actors involved. Instead, it is also a major human rights issue of international significance. The persistence of homosexual practices despite the various discrimination and stigmatisation illustrates that activists and same-sex partners propose to see marriage equality as a human right, rather than a moral, issue. This contestation helps us get insights into why the homosexual groups would threaten to boycott national elections if they were not given equal (majoritarian) recognition in the new secular and democratic society. An informant, a 19 year old senior high school graduate lamented the lack of societal recognition of her sexual orientation.¹⁰⁰ This of course, is not a peculiar demand as it is part of the global demand by all same-sex partners. The peculiarity of her claim is the social

¹⁰⁰ Interview with Amma, February 21, 2015.

context of it. As a sexual minority in a society which frowns on the practice, she said, what they demand is not only moral recognition of their dignity, but also equal majoritarian rights in society, free from any fear and intimidation. According to her, although she still lives with her parents and has been a lesbian since her high school days, none of her relatives, except her “elder sister” [a family friend] knows about it owing to the fear of family rejection. Even though her “sister” has promised not to disclose this to the girl’s parents, she constantly puts pressure on her to change her sexual preference. The sister informed me that she initially was unhappy when she first found out the young girl’s sexual orientation.

I was at first devastated when I found out that Amma was one of them [a group of suspected young lesbians]. I called her on phone and she denied it; but I told her never to come to my house again. I told her to bring my bowl [the young girl had gone for food the previous day] and any of my belongings in her possession. A few days later, she came and apologised and told me she won’t walk with them again but it was a lie... Since then, I have tried to persuade her to change her mind because she and her friends’ behaviour [sexual practice] has brought a lot of bad luck in their families. As I speak now, her dad has been jobless for over three years.¹⁰¹

As a human right issue, same-sex partners face a lot of emotional and psychological stress including experiencing double identity. As Amma’s situation portrays, she has to put on different appearances before her family and outside her lesbian colleagues. Although she continues to live by her sexual preference and still maintains her friends, she has to apologise to her “sister” for the sake of maintaining familial relations. The real challenge is that religious and other anti-homosexual groups have insisted that gay rights are more of a civil rights than human rights. In 2013, for example, public anxiety became high over President John Mahama’s nomination of a female human rights lawyer for a ministerial position at the Gender, Children and Social Protection Ministry.¹⁰² Many interpreted this nomination to mean that the President was giving a tacit support to what people hold as aberrant practice. Religious, professional, student and other well-meaning groups and individuals who were opposed to this nomination argued that making a pro-gay activist a minister of state would compromise the sanctity of the future of the nation.¹⁰³ In a 2013, press release by the Concerned Clergy Association of Ghana regarding their objection to the nomination, they indicated that Ghanaians should not confuse human rights with civil rights. They advised

¹⁰¹ Interview with Diane January 23, 2015 and February 21, 2015.

¹⁰² “Huge Protest over Appointment of Gay & Lesbian Activist Minister,” Modernghana.com, January 15, 2013, <https://www.modernghana.com/news/439632/1/huge-protest-over-appointment-of-gay-lesbian-activ.html>.

¹⁰³ “Huge Protest over Appointment of Gay & Lesbian Activist Minister.”

Ghanaians to be cautious of “the strategy adopted by gay lobbyists, who hyped the human rights of gays when in actual fact their target is to legitimize it into civil rights.”¹⁰⁴ Civil rights are country specific; whereas human rights are universal, they explained.

Because of the moral panic associated with homosexuality and because the practice is held as contrary to local ideals on sexuality, various stigmatising and derogatory names are used to describe homosexuals and their sexual preferences. There are even cases of prominent political figures and religious actors referring to homosexuals as “‘sick’ people who need ‘psychotic’ treatment.”¹⁰⁵ For example, according to Professor Oquaye cited previously, homosexual tendencies are indications that the partners involved are sick in some way or the other. For him, what the individual involved requires is medical or psychotic treatment, not societal acceptance of their deviate sexual conduct. Failure to do this, he argues, would mean that “every disability, every ailment can become a ground for breaking the laws of the country or of society and if that should happen, we’ll be worse than the animals.”¹⁰⁶ One more example must suffice. In 2011, the Moderator of the Presbyterian Church of Ghana, then Reverend Professor Martey indicated the church’s intentions to set up therapy and rehabilitation centres for homosexuals in Ghana in order to check the spread of the “problem.” Like Professor Oquaye, the Moderator is also known to have previously said that homosexuality is a form of sickness although he believes what homosexuals need is a cure and not maltreatment.

Closely related to the above challenge is that as we have seen, homosexuals in addition to being labelled negatively, are also perceived as *amanbofofo*, wreckers of society. It is often said that moral deviation lends itself to legends, some of which lead to injurious consequences, including false accusations of crime, character assassination and the destruction of property, riots and killings.”¹⁰⁷ In the case of Amma, we notice how the woman accuses her of being the cause of her family’s economic problems especially his father’s inability to get a new work after he lost his work as a contractor three years prior to the

¹⁰⁴ Concern Clergy Association of Ghana, “Concerned Clergy Association of Ghana’s Objection to Nana Oye Lithur as Minister for Gender, Children and Social Protection,” Press Release (Accra, January 24, 2013), 4.

¹⁰⁵ “Diaper-Wearing Gays Need ‘psychotic’ Treatment – Mike Ocquaye,” *Ghanaweb.com*, March 21, 2014, <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/Diaper-wearing-gays-need-psychotic-treatment-Mike-Ocquaye-303929>.

¹⁰⁶ “Diaper-Wearing Gays Need ‘psychotic’ Treatment.”

¹⁰⁷ Jeffrey S Victor, “Moral Panics and the Social Construction of Deviant Behavior: A Theory and Application to the Case of Ritual Child Abuse,” *Sociological Perspectives* 41, no. 3 (1998): 543.

interview. The woman also accused Amma's close friend, another informant, as the cause of her father's struggle abroad. We have also seen how homosexuals are blamed as causers of HIV/AIDS.

What exactly is the nature of human rights implications involved in these situations? Negative attitudes and offensive name-calling, as just noted, lead to violence, emotional and psychological problems which the *UN Convention against Torture* classifies as a human rights issue. The World Health Organisation has similarly defined violence as "the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation."¹⁰⁸ It stands to reason that actions that stops the individual from flourishing, including sexual preferences, is categorised as a form of violence.

Crucially, negative ascriptions and attitudes also provide rationales for physical maltreatments of people so constructed. A people's conception of the human person – who is the bearer of rights – influences the way they "give" rights. Gerrie ter Haar, for instance, has postulated that contemporary events have proved that legal tools alone are not enough to firmly ground human rights in diverse cultures. Rather, she says, conceptions of human rights are largely informed by a people's own worldviews and cosmologies.¹⁰⁹ In Ghana, as elsewhere, scholars have found religious convictions and customary worldviews as furnishing the nation-state with "validating foundations for human rights."¹¹⁰ While these values often lead to positive notions and practice of human rights, they also service as recipes for abuse.

Homosexuals' basic right to life have been threatened by anti-gay fanatics who use religious and customary arguments. In the case of the ex-MP who reportedly supported the lynching of homosexuals, we see how he insisted that society should "not talk about any issue of human rights" when its values are threatened.¹¹¹ Labelling homosexuals in derogatory, non-human terms, thus, becomes a recipe for their abuse. In most of Africa, homosexuals have been lynched, set ablaze and variously maltreated in ways that call for serious human

¹⁰⁸ Etienne G. Krug et al., "World Report on Violence and Health" (Geneva: World Health Organization, 2002), 5.

¹⁰⁹ Gerrie ter Haar, "Rats, Cockroaches and People Like Us: Views of Humanity and Human Rights" (Inaugural Address as External Professor of Religion, Human Rights and Social Change, Institute of Social Studies, The Hague, April 13, 2000).

¹¹⁰ Atiemo, *The Inculturation of Human Rights*, 3, 30.

¹¹¹ "Homosexuals Could Soon Be Lynched in Ghana."

rights concerns.¹¹² In Ghana, in 2012, at Jamestown a suburb of Accra, a group of nine men suspected of being members of the gay and lesbian community were reportedly rounded up from their homes and assaulted by anti-gay assailants.¹¹³ It was reported that although the victims made a formal complaint with the Human Rights Advocacy Centre, an NGO, no actions were taken. Also on June 2015, a Ghanaian daily newspaper reported of the death of a suspected lesbian who was beaten two days before her death. According to the media report, the leader of a vigilante group alleged that the said attack was a personal vendetta against gays and lesbians who are believed to have introduced his daughter “to such ‘demonic’ acts.”¹¹⁴ In the discussion on witchcraft earlier in Chapter three, I illustrated the depth that religious and customary fear associated with witchcraft and demonic powers lead people to maltreat those they suspect as familiars of these spirits. This conviction advances our understanding of why homosexuals suspected of engaging in “demonic acts” will be maltreated.

The attitude of the State of Ghana towards issues of homosexuality lead to ambivalent doubts in the minds of local and international observers especially when actions of state law enforcement agencies are taken into consideration. State legal machinery of control especially the police have largely been accused of harassing and blackmailing homosexuals including extortion.¹¹⁵ A 2013 Country Report, for example, found the attitude of the police as possible factors in preventing victims of homosexual maltreatment from reporting incidents of abuse.¹¹⁶ There has been instances where the police have been recorded on camera humiliating homosexuals for the fun of it.¹¹⁷ This notwithstanding, there have also been cases where the police have been proactive in responding to human rights violations of suspected

¹¹² Amnesty International, “Making Love a Crime: Criminalization of Same-Sex Conduct in Sub-Saharan Africa” (London: Amnesty International Ltd, 2013); Thomas Probert, ed., “Unlawful Killings in Africa: A Study Prepared for the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions” (Centre of Governance and Human Rights, University of Cambridge, n.d.), 143.

¹¹³ Dorcas Efe Mensah, “James Town Youth Vow to Eliminate Gays from Their Midst,” *Myjoyonline.com*, August 16, 2012, <http://edition.myjoyonline.com/pages/news/201203/83226.php>.

¹¹⁴ “Suspected Underground LGBT Group In Accra Exposed,” *Daily Guide*, June 1, 2015.

¹¹⁵ US Department of State, “2011 Country Reports on Human Rights Practices” (US Department of State, May 24, 2012).

¹¹⁶ United States Department of State, “2013 Country Reports on Human Rights Practices - Ghana” (United States Department of State, February 27, 2014), <http://www.refworld.org/docid/53284ad814.html>.

¹¹⁷ “Gay Prostitute Arrested by Ghana Police,” *Yotube.com*, October 12, 2013, <https://www.youtube.com/watch?v=79q6cgazzVA>.

homosexuals. For example, on August 2015 a man cruelly beaten by a group of men who suspected him of luring a neighbour into homosexual acts was saved from further abuse and possible death when the police intervened.¹¹⁸ This ambivalent attitude of the police and the cases I have examined resonate the nature of disjuncture between state commitment to its internal values and ideals as well as its commitment to international human rights norms. While the State condemns homosexual acts, it is also committed to other human rights of homosexuals.

4.5 Conclusion

This chapter has furthered an understanding of the way that religion publicly engages law and politics in Ghana. Using same-sex relationships as a case study, I have made three major contributions that depart from existing academic discussions on the controversies of this topic. First, by situating my examination of homosexuality within the historiography of sexual revolution occasioned by social change, I have articulated the level to which colonial laws and monotheistic religious norms altered customary paradigms of marriage, sexuality and love. Marriage, traditionally understood in terms of heterosexual relationship, was not just a social contract, but also a sacred obligation binding the two parties and their respective lineages and ancestors. As introduced laws and churchly marital norms put premium on the spouses, it weakened the religious and customary foundations of conjugal relationship by deemphasising the spiritual bond between the respective lineages of the couples. With the coexistence of different legal norms on marriage, the validity of marriage contract gradually came to depend on State power and not on ancestral blessings.

For many traditional, churchly and state actors, the superimposition of colonial notions of sexuality and marriage has been a precipitating factor for what society holds as aberrant sexual practices including homosexuality. Yet, my analysis of same-sex relationships in contemporary Ghana has raised the need to broaden discussions on this sensitive topic. I have contended that the ongoing tensions over homosexuality is a part of a systematic means through which society has used sexuality to maintain power and order. Throughout its encounter with foreign normative systems and even before that, sexuality was used as an important marker of regulating society and also maintaining chiefly power. In the new society, traditional authorities who wish to maintain the remaining authority they have

¹¹⁸ A.R. Gomda, "Nima Youth Assault Gay Man," *Daily Guide*, August 17, 2015.

insist on the application of their ancestral norm on sexuality as a means of demanding allegiance to his office.

The second unique contribution of this chapter is that I have shown that in the politics of homosexuality, we see very fluid and dynamic relationship between traditional and churchly actors. By characterising homosexuality as un-Ghanaian, a “filth” and a danger to local values, there is no doubt that the values in question are those of traditional customary and familial ideals. The churches in Ghana have used the preservation of this ideals as a basis to sever practical and ideological contact with their partners in the global North. My analysis of this, however, has shown that this sort of churchly move obscures their perceptions of the traditional society and its values. Earlier in Chapters one and two, I introduced the idea that Christianity since its arrival has sought to sanitise the indigenous society from all traditional practices. I also established that particularly in pentecostal narratives, the traditional religious field and the ritual space signify ancestral past which is largely feared as demonic. True pentecostals are therefore admonished to make a complete break with ancestral past. In discourse of homosexuality, nonetheless, we see how churchly actors invoke traditional values to resist what they deem as an imposed value. This situation reinforces the notion that the interrelationship is not always contentious but can and it is also mutual depending on the interest involved.

The third contribution of this chapter is that in the discourse of homosexuality, we see the manifest functions of religion especially in shaping the political agenda of constructing a unified imagined nation-state. Drawing ideas from previous works, I have earlier on shown that while the State superimposes its sovereign power on the diverse religious and cultural populations, in terms of real authority, the State is unable to exercise absolute control over its members especially those outside the central government. Besides, because state power is inadequate to confront universal human rights and other legal standards, the State relies on religious values and authorities to assert its imposed sovereignty. In analysing recent homosexual controversy, I have demonstrated that in a plural legal society such as Ghana, homosexuality has become a fertile zone for ideological and practical contestations between domestic and universal political power and influence. Despite the normative differences, all the three traditions construct anti-homosexuality as a collective cultural value. Doing so requires a political use of past narratives in an attempt to construct a better future. The differences between the various traditions that lead into conflict (discussed in Chapter two) is downplayed. In its place, they focus on a common dream value.

The implication of these is that while state's constitutional law guarantees sexual freedom and other rights, the prevalent influence of religion and custom in Ghana has made it difficult for people to enjoy sexual autonomy outside the paradigms of marriage defined by religion and custom. This chapter has shown that the ongoing controversy over gay rights is not about whether or not homosexuals have rights. The nature of rights that these sexual minorities have was key to the whole controversy. The cases I have presented in this chapter illustrate the idea that when Ghanaians including high profile political actors resist the legalisation of homosexual relationship, they are in principle signalling that despite the constitutional guarantee of sexual freedom, the rights of homosexuals must be respected within the context of religious and customary definitions society has given to marriage and sexuality.

CHAPTER FIVE: CONCLUSION

This thesis has dealt with a crucial but seldom discussed aspect of postcolonial legal and political modernisation in Africa – the persistence of religion and customary legal norms alongside statutory law and international legal systems in the public sphere. The thesis began with the proposition that while Ghana is a constitutionally secular state, it is also a religious society. Tensions are frequent between the normative legal systems and the actors in these domains. This thesis has sought to not only re-examine these tensions but also question the scholarly and popular instinct to blame religion. Focusing largely on the Fourth Republican regime, I have sought to answer the core set of questions posed at the beginning of the discussion: “How significant is the role of religion in contemporary Ghanaian nation-state?” This question has been answered in relation to how the interrelationships of religion and law lead to tensions in contemporary Ghana. My examination of these questions has led to three particular contributions to the academic understanding of the interrelationships and the tensions between the religious, legal and political traditions in Ghana.

First, I have offered a more dynamic account of the changing role of religion than existing analyses that overwhelmingly identify religion as a limit to the legal enforcement, political mobilisation and development of human rights. I began by exploring scholarly arguments that religion and customary institutions challenge contemporary Ghana’s secular orientation. Traditional political institutions such as the chiefly office, as reported in Chapters one and two, have often been cast as hindering the secular ideals of the postcolonial nation-state. Because of this, there have even been proposals for Ghanaians to debate whether or not to scrap the sacral chiefly office.¹ This thesis, however, suggests that criticisms of religion often overlook an important reality of contemporary Ghana, namely, how these ideals function in the public sphere. I have contended that in order to understand the nature of, and issues pertaining to, the legal enforcement and development of human rights in this society, it is necessary to take account of how religion and custom have remained resilient and functioned in the changing legal and political conditions of contemporary Ghanaian society.

Again, I have demonstrated that religion aids in the achievement of certain secular ideals in society. I have sought to demonstrate that conceptual and normative similarities exist between religious, customary and state legal approaches to better governance. Contrary to legal centralist studies that push for the supremacy of civil law structures, I have particularly demonstrated that legal enforcement, political mobilisation and human rights

¹ Cynthia Boakye, “SK Boafo: Lets Debate Chieftaincy Institution,” *The Statesman*, January 8, 2008.

development occur not only through national and international law standards, but are also found in the various religious and customary traditions.² A significant idea that emerged from my analysis of the different case studies was that despite the growing presence of modern secular values, religious and customary notions still have the greatest purchase in citizens' understanding of human rights. In Ghana and elsewhere in the continent, religious and customary normative systems continue to influence and direct "the laws that govern our daily lives starting with the Constitution of any country."³ It is for this reason that as the discussion in Chapter four on same-sex relationships showed, state institutions of legal control, particularly the police, are reluctant to pursue certain cases that they think may undercut the religious or customary values of society.

I have, moreover, established the functions of religious and customary worldviews particularly in shaping socioeconomic and political activities. Religious and customary authorities play a crucial role in contemporary nation-state. In discussing tensions in society, I have demonstrated that at the grassroots levels, the chiefly office is still a potent form of political mobilisation and law enforcement. In both the urban centres and remote parts of the new nation-state, people rely on their traditional authorities and other religious actors to gain access to the unfulfilled socioeconomic promises of the postcolonial nation-state. Cases discussed in Chapters two to four paid especial attention to the authorities of Ghana's new churches by pointing out that although these actors are rarely addressed in academic discussions on law and order in society, they are a crucial dimension of contemporary Ghanaian public sphere. In discussing the different types of actors in society in Chapter two, I pointed out that churchly actors teach their members values and virtues, which are vital for a democratic pluralistic state. The churches, to a very large extent, are also their members' main source of such values. By interrogating the economic and political marginalisation that necessitates pastor-prophets' discourse and practice on witchcraft phenomenon, Chapter three of this thesis has revealed why attention has to be paid to the indispensability of these churchly leaders.

² Kwadwo Appiagyei-Atua, "Contribution of Akan Philosophy to the Conceptualisation of African Notions of Human Rights," *The Comparative and International Law Journal of Southern Africa* 33, no. 2 (July 2000): 165–92.

³ Mogoeng wa Mogoeng, "Law and Religion in Africa: The Quest for the Common Good in Pluralistic Societies," A Keynote Address given at The Second Conference on Law and Religion in Africa held at the University of Stellenbosch, South Africa, on 26-28 May, 2014, 1-17.

Besides, in terms of contemporary Ghana's relation with international communities, I have contended that religious and customary actors resist an intrusion of values held as alien (Western) into society. As a result, these non-state actors whose positions are based on religion often serve as useful allies to national authorities, especially when it comes to the nation-state resisting international legal and political interference. The discussion on the ongoing controversy over same-sex marriage in Chapter four, for instance, brought to bear the idea that national authorities largely invoke religious and customary values to assert state sovereignty and also to resist international pressure to legalise same-sex marriage.

By articulating the multifaceted role religion plays, this thesis has sought to demonstrate that in postcolonial African nation-states, ethnic, religious, customary and cultural heterogeneity remains a major defining factor. Unlike Western societies where issues such as individual liberty and citizenship equality emerged after societies had become religiously homogeneous,⁴ in Ghana and elsewhere, the situation is different. Because religious and ethnic diversities have continued to be a crucial part of this society, there is the need to pay attention especially to both individual rights and communal self-determination.

In addition to providing a more dynamic account of the role of religion in Ghanaian law and politics, a second contribution of this thesis lies in the typology it presents for interpreting tensions between diverse normative orders and the different actors of these orders. To be able to properly understand this situation, I sought to problematize the complex relationship of religion and law by identifying different levels of norms and authorities of these distinct yet overlapping domains. By employing an historical-critical method, I explored the legal and political history of modern Ghana to contend that contrary to earlier works that project state supremacy, there are rather shared sovereignties.⁵ From the beginning of the discussion, I sought to make the reader aware that in contemporary Ghanaian society, there are coexisting normative systems and authorities because the nation-state emerged from diverse traditional polities with different ethnic, religious and cultural populations. The discussion subsequently supported the view that the implication of this coexistence is that in the governance of space, power, control, influence and jurisdictional authority exist in varied and intersecting forms. This situation presents itself in differing interpretations of and

⁴ Rajeev Bhargava, 'States, Religious Diversity, and the Crisis of Secularism', *Hedgehog Review* 12, no. 3 (Fall 2010): 8–22, especially at 12.

⁵ Ray, "Divided Sovereignty."

insistence on issues of justice, liberty, equality, and rights and the associated tensions. Concentrating mainly on three identifiable normative actors of society (State, chiefly, and churchly actors), in Chapter two, for example, I demonstrated this claim by presenting a typology of three major complex levels of normative traditions in tension. Using metaphoric representation, I gave the different types of tensions that result from different interpretations and insistence on particular values as: the clash between sacred stool and the Bible, with Constitution behind neither; tensions between the Constitution and the sacred stool often, but not always, tacitly supported by the Bible; and, finally, tensions between secular and sacred normative actors.

My analysis of select cases has demonstrated that in a majority of the tensions that occur, religion is not the sole factor in the manner that some scholars have suggested. Rather, I have shown that majority of the tensions in society have centred on the insistence on overlapping state and non-state rights.

The third and most essential contribution of this thesis is given more insights into the discourse of legal pluralism, and has sought to depart from traditional usage and application of this concept. I have acknowledged well-established scholarly works on the coexistence and tensions of diverse normative orders in Ghana and elsewhere. I have also pointed out political actors' insistence on this reality. Yet, I raised the concern that studies and political narratives on Ghanaian laws often privilege civil law structures, giving religious and customary normative systems in particular a secondary status. Instead of persuading the citizenry that imposed civil law structures and international human rights laws are beneficial, for example, political authorities often employ legal manipulation to subject religious and customary legal norms and authorities into acquiescence. In Chapters one and two in particular, I noted that constitutional law prevents the nation-state from interfering in chiefly affairs. The politics of legal pluralism, I indicated, is such that it (legal pluralism) does not generate equality. As such, the Constitution and the Chieftaincy Act, for example, define who a chief is. These contradictory and claw-back provisions in statutory laws disadvantage chiefly actors who, ideally, ought to be have been independent normative actors if legal pluralism were to generate equality. The implication of this situation, I showed, is that once religious and customary normative systems are regulated and enforced by the State, they lose their religious and customary values. This argument also supports An Na'im's observation that "because state judges and officials are neither competent nor authorized by the religious or

cultural frame of reference of those norms, the result will be the distortion of the norms and obstruction of their natural evolution.”⁶

Drawing on more recent scholarly works and my own findings from my fieldwork, I have demonstrated that legal pluralism is not merely an analytical framework for describing tensions resulting from the coexistence of contemporary Ghanaian normative orders. Instead, legal pluralism is – and ought to be – part of the solution to these problems. Putting emphasis on the synchronic operation of plural legal orders, the thesis has contended, will help ameliorate tensions that often result in society. The descriptive frames of the plural nature of governance and sovereignty developed in both Chapters two and four, for example, were useful to elucidate my claim that legal pluralism is a solution. For the postcolonial nation-state to achieve the democratic pluralistic visions it aspires to, there is the need for the actors of society identified in this thesis to pay attention to the values that all the constituent parts of plural legal orders offer. This normative aspect of legal pluralism needs further elaboration which I detail below.

Normative Implications

The implications of the foregoing analysis are significant and suggest a broad range of areas for further discussion in the study of religion-law engagements in postcolonial states. While the thesis indicated in the introductory chapter that it sought to employ legal pluralism descriptively, analytically and normatively, the discussion so far has largely focused on empirical and analytical aspects. It has particularly demonstrated the value of legal pluralist frameworks for understanding religion-law dynamics in Ghana. The major preoccupation has been with tensions. The thesis has shown that in addressing social problems there is the need to pay attention to the reasons why these problems occur, their nature and their seriousness. As a result, I have tried not only to describe, but also explore the nature of tensions in terms of legal disputes, religion-derived and custom-based conflicts, political actions, and reactions and oppositional discourses, explicating what they are, how they occur, and how we can make sense of them. These descriptive and exploratory dimensions have been examined throughout the thesis. I have pointed out, especially in 2.3.2, however, that identification of the existence of such tensions is not novel. My thesis has focused primarily on the ways in which legal pluralism helps us to understand the tensions within society; the coexistence of

⁶ An-Na'im, "Religious Norms and Family Law," 798.

different legal schemes also gives us a kind of metrics for considering the tensions discussed in this thesis.

Liberal theory anticipates tensions in plural legal societies, but also throws up a range of different modes of managing them.⁷ As just noted, in the introductory chapter, I pointed out that although the tensions discussed are inevitable, they can also be overcome. It is, therefore, worth pursuing this. The normative dimension takes us beyond identifying and analysing the shape of tensions in Ghana to focusing on what ought to be done about them.

In this final section, therefore, I move beyond analysis, and my fieldwork and empirical research, to consider normative implications arising from this work and my exploration of legal pluralism. I suggest four ways of overcoming the tensions discussed in this thesis. These are: inclusive acknowledgement; the use of locally appropriate concepts of human rights; education; and the balancing of seemingly competing rights. Because I purposely dealt with cases largely from grassroots, my suggestions mainly focus on how to manage these tensions from below.

The first step to addressing the tensions I have identified is for all actors of the normative traditions in society to admit that there is a problem. The case studies in this thesis have shown that in many occasions the problem triggers from within a particular tradition itself. I, therefore, use *inclusive acknowledgement* as a convenient term for a collaborative effort by the different normative actors to recognise the strengths and the weaknesses inherent in their own and other normative orders. This view combines both ideological and practical approaches to addressing tensions in society. Throughout this thesis, I have maintained that confrontations occur when the various normative actors insist on the use of force to defend their position and to demand conformity to their laws. Citing Archbishop Sarpong, for example, I also pointed out in Chapter two that most of the tensions in society are exponents of both the actors' display of self-importance and the lack of proper knowledge of their own traditions. In all the tensions discussed in this thesis, we realised that the normative actors constantly made references to the values attached to the sacred stool, the Bible or the Constitution without due regard to other alternative views. Inclusive acknowledgement is an open-minded approach that helps normative actors to realise that in a religiously and legally plural society, the values they hold dear are not always infallible in relation to those of other groups and changing society.

⁷ Makau wa Mutua, "The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties," *Virginia Journal of International Law* 35 (1995 1994): 339–80, especially at 341.

Changing minds, to be sure, largely depends not only on the ability to rationally explain to others the benefits of accepting one's arguments but also acknowledging the weaknesses inherent in one's own argumentations or beliefs. Elsewhere, I have suggested that when competing normative traditions clash, there is the need for the divergent normative actors to acknowledge the values of other normative systems.⁸ In this thesis, too, I have shown that the various sources of normative legal standards have their own weaknesses and strengths. Particularly in the case of tensions over the Constitution and the sacred stool, for example, rather than the use of aggressive state legal interventions and ancestral customary sanctions respectively, it is crucial that these normative actors engage in collaborative dialogue and acknowledge the positive values and the flaws of each other's traditions. We do not build a proper functioning plural legal society by taking all functions of other traditions and investing them under either the sacred stool, the Bible or the Constitution, each of which is only a source of plural normative orders. Instead, we build a proper functioning plural legal order by making sure that each component plays its functions in society without undue restrictions.

The principle of acknowledgement, to be sure, is more than noting that differences exist within and among normative traditions. It is also about accommodating the different traditions. It is, therefore, rewarding that both state and non-state actors are engaged in collaborative dialogue to agree on which areas of their traditions need to be brought into societal and contemporary realities. In discussing the typology of tensions, I indicated that understanding the nature and complexity of tensions is important if any meaning can be made of what is going on in society. Likewise, these tensions cannot be solved without acknowledging that they result from internal weaknesses within one's own tradition. This is the ideological aspect of inclusive acknowledgement.

At the practical level, once the weaknesses and the strengths have been self-acknowledged and also presented to each other, certain concrete steps can be taken to resolve the tensions. Given that Ghana is a plural legal society and the customary law applicable to particular communities, for example, is entrenched by the Republican Constitution, the core issue is the extent to which such pluralism ought to work.⁹ In relation to tensions associated with same-sex relationships, for example, the application of the inclusive acknowledgement

⁸ Tweneboah, "A Clash of Legal Norms," 115.

⁹ Jeff Richstone, "The Inuit and Customary Law: Constitutional Perspective," in *Indigenous Law and the State*, ed. Bradford W. Morse and Gordon R. Woodman (Dordrecht, The Netherlands: Foris Publications, 1988), 239–57, especially at 249.

model goes beyond each party admitting that homosexuals have rights. That they have rights in each of the normative traditions is an already established fact and needs no further debate. The proof of this acknowledgement rather lies in how these rights ought to be “given.” Invoking the plural legalist argument, however, we realise that ideally the cultural and religious communities of contemporary Ghana also have the constitutional right to self-determination and the application of their customary law. As a result, the State’s use of legal force to seek compliance with national and international human rights laws on homosexuals is a violation of the principles of legal pluralism especially in relation to the autonomy of the differing normative legal orders. A concrete way of balancing competing claims of state and non-state values is that rather than the State using force to apply legal universalism, for example, there is the need to engage in fruitful dialogue to determine which areas of societal ideals need to be changed and which areas need to be maintained. This is what democracy and legal pluralism require. The use of legal aggression or manipulation to legalise that which the people themselves do not see the need to change is inconsistent with the very democratic rights which the law seeks to enforce.

The reality, however, is that legal pluralism does not necessarily generate legal equality. While there ought to be a synchronic application of the various normative systems, this must pass certain tests including whether or not the values one holds dear offends others. Chiefly and churchly actors, indeed, cannot lose sight of the changing realities of society particularly the notion of global citizenship. In a plural legal society such as Ghana, as Merry has pointed out, protecting and respecting culture in terms of the ways in which the local people hold it is politically effective.¹⁰ At the same time, care must be taken in balancing culture and rights, she argues. Understanding culture as something that is fixed, uniform and unchanging, she says, overlooks the influence of globalisation in the present and historical transfer of cultural beliefs and practices in the past. Contemporary Ghanaian society, we have said in relation to tensions between the stool and the Bible, is no longer culturally or religiously monochrome. The controversy over same-sex relationships, for example, is not merely a Ghanaian problem but rather a globally complex and contested issue. Yet in a religiously and culturally saturated society such as contemporary Ghana, as the case studies have shown, applying international legal coercion alone to deal with this situation has certain residual effects for homosexuals which I have already dealt with.

¹⁰ Sally Engle Merry, “Changing Rights, Changing Culture,” in *Culture and Rights: Anthropological Perspectives*, ed. Jane K. Cowan, Marie-Bénédicte Dembour, and Richard A. Wilson (Cambridge: Cambridge University Press, 2001), 42–43.

Similarly, chiefly and churchly actors' use of force and pejorative discourses against homosexuals devalues the rights of homosexuals and closes the door of open discussion. As I have shown, arguments against homosexuality are largely based on moral panic particularly the fear of an imagined destruction that homosexual practices are perceived to bring to society. There is the need, therefore, for each party to provide a strong basis for accepting their values or rejecting the values of the other tradition. The position of my inclusive acknowledgement is that society needs to move beyond essentializing one's own "positive" values and rather respect and accommodate those of the other party. Acknowledging the weaknesses of one's own tradition and admitting the strengths of the other, to be sure, does not in itself eradicate the tensions. Yet, it is a first step towards opening the door for other strategies of addressing these tensions as I discussed below.

Another way we can address tensions discussed in work is through the use of *locally appropriate concepts of human rights*. Rather than state-centred approaches which largely rely on legal rationality, this view suggests the need to broaden community-based mechanisms of human rights implementation by using local versions of human rights.¹¹ Recent academic studies have tended to pay attention to the relevance of local conceptions of justice to international legal and human rights norms.¹² Some have observed with concern the ways in which "the relationship between epistemology of human rights practices and the social ontologies in which they are necessarily embedded"¹³ are very often neglected in human rights discourse and practice. In taking this into consideration, Jim Ife, for example, has proposed two approaches to understanding human rights. These are the discursive (what the official documents say are rights) and reflexive (what the local people say are rights) approaches. The former is what he referred to as human rights from above; the latter, which is in line with my proposal, is what he termed as human rights from below.¹⁴

¹¹ Packer, *Using Human Rights to Change Tradition*, 24; Jim Ife, *Human Rights from Below: Achieving Rights through Community Development* (Cambridge: Cambridge University Press, 2009).

¹² Atiemo, *The Inculturation of Human Rights*; Mark Goodale and Sally Engle Merry, eds., *The Practice of Human Rights: Tracking Law between the Global and the Local* (Cambridge: Cambridge University Press, 2007); Koen de Feyter et al., eds., *The Local Relevance of Human Rights* (Cambridge: Cambridge University Press, 2011).

¹³ Mark Goodale, "Introduction: Locating Rights, Envisioning Law between the Global and the Local," in *The Practice of Human Rights: Tracking Law between the Global and the Local*, ed. Mark Goodale and Sally Engle Merry (Cambridge: Cambridge University Press, 2007), 4.

¹⁴ Although he argued for reflexive approach, he nevertheless, believes that the two go together and do not seem to contradict each other to a larger extent. Jim Ife, *Human Rights from Below: Achieving Rights through Community Development* (Cambridge: Cambridge University Press, 2010), 134–35.

The data from my research especially as demonstrated in Chapter four, supports the view that all the competing normative traditions have notions of what constitutes human rights and dignity. Each normative tradition, for example, values the inalienability of the human person; each of them also has sanctions against violating the rights and dignity of others. As such, for most citizens, their notion of criminal offences are not based on legal rationality viz. the Constitution or the Criminal Code, for example.¹⁵ These state documents, to be sure, remain distant to the majority of these citizens. For such people, the notion of rights is largely informed by their religious and customary ideals. At the grassroots level, this notion can be a useful way of challenging people about the importance of respecting the rights and the dignity of people who society view as different.

My suggestion on using local notions of human rights is not intended as an apologetic defence of chiefly or churchly autonomy, neither does it intend to correct past colonial and ongoing postcolonial biases against these normative actors. Instead, it is based on the realities of contemporary Ghanaian justice delivery systems and human rights practice. Rather than seeing these normative actors as anti-secularists, the position here is that, currently, the state of Ghana, as elsewhere has not demonstrated a strong control over its secular values. Both state and non-state normative actors, we have seen, have their own weaknesses in relation to their commitment to achieving their own dream values. We have seen from the discussion on child witchcraft and same-sex relationships that state reliance on legal rationality to achieve international human rights standards is largely frustrated not only by religious people. Rather, in discussing opposition to same-sex partnership, for instance, we realised that certain statements and actions of state officials are an actual and potent threat to the safety and rights of homosexuals. It is therefore imperative that in addressing issues such as this, attention is paid to how violations of certain rights are inextricably tied to both state and non-state normative actors and traditions.

The existing alternative dispute resolution mechanism, I suggest, can be strengthened to such an extent that chiefly and churchly actors can formally handle specific criminal cases such as sexual offences, stealing, assault and similar offences.¹⁶ My data has shown that

¹⁵ Sally Engel Merry, for example, has noted in relation to the Hawaiian society, but largely applicable to societies elsewhere, that: "Local communities often conceive of social justice and fairness in quite different terms from human rights activists." Merry, "Human Rights and Transnational Culture," 55.

¹⁶ Kodzovi Akpabli-Honu, "The Legal versus the Domestic Treatment of Child Sexual Defilement Cases in Ghana," in *Contemporary Social Problems in Ghana*, ed. Steve Tonah (Accra: Yamens Press Ltd, 2009), 229–40, especially at 232.

despite the influence of modern legal systems and social change on informal mechanisms of social control, in the face of legal dysfunctions in many communities, religious and customary modes of justice delivery are still well invoked and patronised even by high ranking political actors.¹⁷ Despite the legal limitations, already these non-state actors deal with such cases due to limited state presence across vast areas of the State. My suggestion is that rather than secretly handling proscribed criminal cases, which raises issues such as procedural fairness, these non-state normative actors must be well educated on modern legal systems and be resourced to be better prepared to formally deal with these cases. As already mentioned, in carrying out legislative reforms aimed at modernising its traditional customs and usages, as part of state responsibility under international human rights law, it has been found out that such reforms when rooted in both international human rights and local contexts are found to be the most effective means of achieving state responsibility.¹⁸

In terms of *education*, when discussing child witchcraft accusations and same-sex relationships, we realised that derogatory name calling and other forms of abuses against suspected child witches and homosexuals occur due to misinformation and ignorance. We also noted that majority of chiefly actors, particularly *Adikrofo* (village chiefs) who are in constant touch with the people on the ground are largely unaware of state legislations. This we noted, poses a threat to their commitment to the enforcement of national laws. As John Rawls also has suggested: “unless citizens are able to know what the law is and are given a fair opportunity to take its directives into account, penal sanctions should not apply to them.”¹⁹

We have already noted from arguments by Archbishop Sarpong that churchly rejection of some of the traditional customary practices is a function of ignorance. In addition, citizens who repudiate local values often insist these values are inconsistent with their international human rights as well as modern democratic governance. Such insistence sometimes belies a lack of awareness of statutory recognition of local values. It is, therefore, crucial that citizens are educated on the prospects and limits of fundamental rights and civic matters. Jessica Almqvist has noted that:

¹⁷ Tweneboah, “The Culture of Duabo (Imprecation),” 5.

¹⁸ Christina Beninger, “The Effectiveness of Legislative Reform in Combating Domestic Violence: A Comparative Analysis of Laws in Ghana, Namibia and South Africa,” *Netherlands Quarterly of Human Rights* 32, no. 1 (2014): 75–108; International Council on Human Rights Policy, “When Legal Worlds Overlap,” 142.

¹⁹ John Rawls, *A Theory of Justice*, Revised Edition (Cambridge: Belknap Press of Harvard University Press, 1999), 212.

A legal system may distribute entitlements and opportunities. In order to benefit from them, it is crucial for citizens to be acquainted with a variety of specific legal requirements regarding deadlines, application forms, conditions for eligibility, and so on. Meeting these requirements is not simply about taking advantage of the public institutions that have been established to provide a number of goods required by everybody given their critical importance to the enjoyment of individual freedom. To benefit from these goods is not a luxury, but necessary to be able to make use of that freedom.²⁰

One possible way of approaching this is that alongside the existing Religious and Moral Education, there is the need to introduce civic education at the various levels of educational curriculum. State agencies such as the National Commission on Civic Education, a commission responsible to education citizens on civic matters must be better resourced to rise up to their statutory mandate. For a long time, their public education programmes have been election-based sensitisation leaving out some of their most important functions.

In discussing the place of state and non-state legal systems in relation to child witchcraft accusations, we observed that Bicchieri's recent study has identified the media as one of the key tools for changing social norms and behaviours.²¹ In Ghana, with the liberalisation of the airwaves since the Fourth Republican regime, in recent times, virtually every remote part of the country has access to one form of mass media or another especially private or state-owned FM and television stations. There is also a non-for-profit community information centres in the rural areas where local announcement and information are transmitted to the people. Because all the community information centres, most FM and some television stations operate in the local languages, especial weekly airtime can be dedicated to teaching citizens not only about fundamental rights and democratic governance but also the relevance of different legal fora coexisting. To be sure, state legal interventions can be (and are) used to deter people from certain behaviours in society. Yet, there is evidence that in both traditional and complex societies, changes in behaviour very often reflect expectations of shame and pride.²² As Bicchieri suggests, using the media to continuously emphasise the number of people who engage in good behaviour stands a better chance of encouraging others who are not yet doing so to join the crowd.²³

²⁰ Jessica Almqvist, *Human Rights, Culture, and the Rule of Law* (Oxford and Portland: Hart Publishing, 2005), 198.

²¹ Bicchieri, *Norms in the Wild*, 147–53.

²² Cass R. Sunstein, "Social Norms and Social Roles," *Columbia Law Review* 96, no. 4 (May 1996): 903–68.

²³ Bicchieri, *Norms in the Wild*, 152.

In addition, there can be an all-embracing educative programme on a particular crucial topic of national interest, such as homosexuality. Here, rather than inviting particular normative actors, representatives of the various normative actors must be invited to a radio or television programme to find a nationally appropriate approach to that particular issue. I am aware that some radio and television stations have similar programmes. Earlier in Chapter three, I gave the example of the local FM programme, *Etuo mu Esum* (“the barrel of a gun is dark”) during which “experts” are invited to the studio to share their experiences of what society holds as spiritual realities such as witchcraft. The challenge with programmes such as this is that “the experts’ views” are one-sided. My approach rather calls for situations whereby the various normative authorities are represented in the studio to give their perspective, the religious and legal implications of engaging in a particular action in society. This creates a cooperative relationship between the various actors. Doing so will not only educate audiences about diverse ways of approaching social problem but also will lead to fruitful means of finding a solution to the issue at stake and a respect for each other’s view.

Finally, the entire discussion and the tentative suggestions I have provided show that there are opportunities as well as challenges in the various normative traditions in tension. The *balance of rights* approach suggests that religious and customary normative systems, in particular, can be brought to acceptable national and international human rights standards without invalidating indigenous capacities for changing social norms and values or without making the people feel their values and practices have been under attack. It is important that in seeking new ways of addressing the tensions, the various normative actors must focus on what the divergent normative systems of society mean to citizens and how these systems can gradually be brought to contemporary realities. Merry has affirmed that in the discourse and practice of human rights, it is expected that human rights ideas presented in conformity with local values, norms and images are more likely to be accepted by the locals. A major difficulty with this, as she notes, is that these human rights ideas are also likely to lose their funding, larger audience and global legitimacy if they are not presented in a way conformable to transnational rights principles.²⁴ In discussing child witchcraft accusations, we realised the core tenant of legal pluralism, the synchronic operation of diverse legal norms, is often disregarded by non-religion derived actors. Citing Kirby, we indicated that internationally networked human rights actors largely employ Western-derived approaches to social issues

²⁴ Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago and London: The University of Chicago Press, 2006), 5.

and are much concerned with the human rights image of Ghana abroad.²⁵ But as the various cases studies particularly witchcraft and same-sex partnerships have shown, in trying to balance competing rights, a cautious attention must be paid to the conditions under which the rights of individuals or minorities can supersede the majoritarian rights and vice versa.

I have sought in this thesis to show that the religion-secular separation which is a crucial marker of modern Western secular societies are not neatly translated into the realities of contemporary Ghanaian public sphere. Building on previous studies and supporting it with empirical evidence, I have shown that though a professed secular state, religion influences the majority of the activities in the Ghanaian public space. The realms of religion, law and politics, therefore, intricately crossover, often times with religion seeking to set the agenda for certain crucial national debates and policies.

My analysis in this thesis has explained something that we did not know or that previous researchers neglected. In particular, looking at the tensions the way I have examined them gives us real insights in terms of the role of religion and law in Ghana. While the intricate relationship between religion and law indeed challenges contemporary Ghana's modernising and secularising ideals, it aids legal implementation, political mobilisation and the development of human rights. Until we understand this and the associated tensions in greater precision both in terms of theoretical and practical contexts, we are not going to fully appreciate the relationship between religion and law. Despite religion being persistently faulted as an impediment to achieving a unified legal and political modernity, it also serves as a vital tool for realising the state's legal ideals, achieving political mobilisation, and meeting international human rights standards. Political authorities, for instance, continue to invoke religion as part of attempts to assert the sovereignty of the nation-state. This ongoing pragmatic consideration means that religion must be addressed with greater precision in the context of legal and political discussions in contemporary Ghana.

²⁵ Kirby, "Earth Shrines," 51.

Appendix

In line with the confidentiality issues as part of the Research Ethics Approval for this thesis, expect for academic informants and those who waived their consent, as already indicated, pseudonym are used for the real names of informants below. Even so, some information such as the gender, profession or status in society as well as place of interview have not been provided for some of these informants because doing so would still give a clue of their real identity.

Face-to-face Interviews

No.	Informant	Gender	Profession/Status	Place	Date
1	Fr. Kwasi Bob	M	Priest	Berekum	10/12/2014
2	Nana Adwoa M	F	Queen mother	Techiman	14/12/2014
3	Nana Besseah	M	Chief	Wenchi	16/12/2014
4	Afia Gifty	F	Student	Sunyani	17/12/2014
5	Sister Serwaa	F	Trader	Techiman	28/12/2014
6	Madam Amponsaa	F	Educationist (Rtd)	Techiman	3/01/2015
7	Nana A.F.	M	Chief/Educationist (Rtd)	***	10/10/2015
8	Madam Amoako	F	Teacher	Dormaa	16/01/2015
9	<i>Okomfoɔ</i> K.B.	M	Traditional Priest	Techiman	23/01/2015
10	Kwasi	M	Shrine Assistant	Techiman	23/01/2015
11	Diane	F	N/A	Techiman	23/01/2015
12	Yeboaa	F	N/A	Techiman	23/01/2015
13	Owusuuaa	F	N/A	Tanoboase	10/01/2015
14	Nana O.A	***	Chief/Educationist (Rtd)	***	11/01/2015
15	Evangelist A	M	Evangelist	***	15/02/2015
16	Linda	F	Student	Techiman	21/02/2015
17	Amma	F	Student	Techiman	21/02/2015
18	Diane	F	Student	Techiman	21/03/2015
19	<i>Okomfoɔ</i> P	M	Traditional Priest	***	25/02/2015
20	Nana Panin	M	Chief	***	4/03/2015

21	Nana Baffour	M	Chief	Krobo	4/03/2015
22	Asantewaa	F	N/A	Tanoboase	7/03/2015
23	Amma Krah	F	N/A	Tanoboase	7/03/2015
24	Auntie Abena	F	Trader	Techiman	8/03/2015
25	A.T	M	Shrine Attendant	Tanoboase	8/03/2015
26	K.M	M	Traditional Priest	Tanoboase	8/03/2015
27	Akua Mama	F	***	Kwaso	17/03/2015
28	Anita	F	***	Kwaso	17/03/2015
29	Alphonsus Kyeremeh	M	Student	Kwaso	17/03/2015
30	Nana Abubakar	M	Chief	Hansua	22/03/2015
31	Elder Dan	M	Farmer	Tanoboase	22/03/2015
32	Eric Bawa	M	Journalist	Techiman	23/03/2015
33	Archbishop Sarpong	M	Clergy/Anthropologist	Kumasi	24/03/2015

Telephone interviews and email communications

No.	Name	Gender	Profession/Status	Means	Date
1	Archbishop Sarpong	M	Clergy/Anthropologist	Email	29/08/2014
2	Fr. James Annor Ohene	M	Priest/Lawyer	Telephone	18/12/2014
3	Nana C	M	Shrine Attendant	Telephone	24/02/2015
4	Nana Bofotia	M	Chief	Telephone	05/05/2015
5	Adwoa Yeboaa	F	N/A	Telephone	09/06/2016
6	Professor David O. Ansah	M	Academic	Email	6/07/2016
7	Professor Jean Allman	F	Academic	Email	6/07/2016
8	Professor Akosua Perbi	F	Academic	Email	8/07/2016
9	Professor Emmanuel Akyeampong	M	Academic	Email	9/07/2016

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